United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

76-7418

United States Court of Appeals

For the Second Circuit.



Bp/

ELIZABETH C. MONROE,
Plaintiff-Appellee,

against

ROBERT W. BLANCHETTE, RICHARD C. BOND, and JOHN H. McARTHUR, Trustees of the property of PENN CENTRAL TRANSPORTATION Co., Debtor,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

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THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-8076—1976

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

ELIZABETH C. MONROE,

Plaintiff-Appellee,

against

ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. MCARTHUR, Trustees of the Property of Penn Central Transportation Co., Debtor,

Defendants-Appellants.

DOCKET ENTRIES.

75 Civ. 2913 ELIZABETH C. MINOR vs. ROBERT. W. BLANCHETTE, ETC. ET. AL. FRANKEL.J.

DATE	NR.	PROCEEDINGS	PG.2
06-17-75	1	Filed Petition for removal from Supreme Court, State & County of New York.	
06-17-75	2	Filed Removal bond #8058-00-60 in the sum of $500, Federal Insurance Company.	
07-01-75	3	Filed pltff's notice of demand for trial by jury.	
07-07-75	4	Filed ANSWER of defts. Robert W.Blanchette,Richard C. Bond and John H. McArthur,as trustees etc. to the complaint. (CHO & B)	
07-16-75	5	Filed pltff's interrogs.	
07-24-75	6	Filed pltff's notice of taking deposition of defts. on 07-30-75	
09-18-75	7	Filed Defts answers to interrogs.	
11-18-75		PRE-TRIAL CONFERENCE HELD BY Schreiber, U.S.M.J.	
1-5-76		Filed deft's pre-trial memorandum.	
1-9-76		Filed deft's notice to produce for discovery & inspection at the offices of Magistrate Schreiber, on 1-16-76.	
3-15-76		Filed pltffs demand for copy of report of medical examination by defts physician, Peter Cryus Rizzo, M.D.	
4-2-76		Filed defts notice to take deposition of Robert Love. Subpoena Iss.	
7-26-76		Jury trial begun.	
7-28-76		Continued	
7-28-76		Continued & concluded (3 days) for Pltff in the am't of $25,000.	
7-30-76		Filed Judgment #76,729 & Order that pltff have judgment against defts Trustees of the property of Penn Central Transportation Co., Debtor, in the am't of $25,000.....Clerk, n/m	
7-30-76		Filed by pltff notice of entry of judgment& bill of costs.	
8-16-76		Filed notice of entry of judgment.	
8-25-76		Filed Bill of Costs on Judgment #76,729, as taxed in the sum of $370.20, in favor of the pltffs, as against the defts, & added to the judgment.....Clerk.	
8-26-76		Filed defts notice of appeal to the USCA from the judgment in favor of the pltff ent. 7-30-76, upon the verdict of a jury on 7-28-76, & from each & every part of said judgment, except the amount thereof. Copy sent to: Fuchsberg & Fuchsberg, 250 B'way, New York, N.Y. 10007. $250 cash posted in lieu of bond on appeal.	
9-29-76		Filed pltffs pre trial memorandum.	

Petition for Removal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ELIZABETH C. MONROE,

Plaintiff,

against

ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. MCARTHUR, Trustees of the Property of Penn Central Transportation Company, Debtor,

Defendants.

Civil Action File No. 75 Civ. 2913-MEF.

To the District Court of the United States,
For the Southern District of New York:

The petition of Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of the Penn Central Transportation Company, by Conboy, Hewitt, O'Brien & Boardman, their attorneys, respectfully shows to this Court and alleges:

1. Your petitioners are defendants in an action presently pending in the Supreme Court of the State of New York, County of New York, in which Elizabeth C. Monroe is the plaintiff.

2. Said action was commenced by the service of a summons, a copy of which is hereto annexed, on defendants on May 16, 1975 in the City, County and State of New York. A copy of the initial pleading setting forth the claim for relief upon which this action is based, to wit, the complaint, a copy of which is hereto annexed, was

received by the defendants on May 16, 1975. Not more than 30 days have elapsed since the receipt of said initial pleading.

3. Said action is a civil action and, upon information and belief, the matter in dispute exceeds, exclusive of interest or costs the sum of Ten Thousand Dollars ($10,000). Upon information and belief, the action does not arise under the Act or Acts relating to the liability of common carriers by railroad to its employees or any amendment thereto.

4. Upon information and belief, the action is between citizens of different States, plaintiff being presently and at the time the action was commenced a citizen of the State of New York; and the defendant Robert W. Blanchette is not a citizen of the State of New York, wherein the action is brought, being a citizen and resident of the Commonwealth of Pennsylvania, residing in Wynnewood, Pa.; and the defendant Richard C. Bond is not a citizen of the State of New York, wherein the action is brought, being a citizen and resident of the Commonwealth of Pennsylvania, residing in Brinmore, Pa.; and the defendant John H. McArthur is not a citizen of the State of New York, wherein the action is brought, being a citizen and resident of the Commonwealth of Massachusetts, residing in Wayland, Mass.; and Penn Central Transportation Company is not a citizen of the State of New York, wherein the action is brought, being a foreign corporation organized and existing under the Laws of the Commonwealth of Pennsylvania and having its principal office and place of business in the City of Philadelphia, Pa.

5. Your petitioners herewith present a bond with good and sufficient security conditioned that the defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or improperly removed.

WHEREFORE, your petitioners pray this Honorable Court that the said action now pending in the Supreme Court of the State of New York, County of New York, be removed to the United States District Court for the Southern District of New York.

Dated: New York, N. Y.
June 10, 1975

ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. MCARTHUR, as Trustees of the Property of the Penn Central Transportation Company
By: Conboy, Hewitt, O'Brien & Boardman
By: Thomas V. McMahon
Member of Firm
Attorneys for Defendants Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Penn Central Transportation Company
20 Exchange Place
New York, N. Y. 10005
344-3131

Summons.

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

ELIZABETH C. MONROE,

Plaintiff,

against

ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. McARTHUR, Trustees of the Property of Penn Central Transportation Company, Debtor,

Defendants.

Plaintiff designates New York County as the place of trial.

The basis of the venue is Defendants' Principal Place of Business.

Plaintiff resides at 219-12 43rd Avenue, Bayside, New York 11361, County of Queens.

To the above named Defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your

failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, May 12, 1975

FUCHSBERG & FUCHSBERG
Attorneys for Plaintiff
Office and Post Office Address
250 Broadway
New York, New York 10007
212 WO. 2-2800

Defendant's address:

466 Lexington Avenue,
New York, New York

Verified Complaint.

SUPREME COURT OF THE STATE OF NEW YORK.

COUNTY OF NEW YORK.

[SAME TITLE.]

Plaintiff, by and through her attorneys, Fuchsberg & Fuchsberg, complaining of the defendants, respectfully shows to this court and alleges, upon information and belief, the following:

1. At all of the times herein mentioned, Penn Central Transportation Company (hereinafter referred to as Penn Central) was a foreign corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania.

2. A petition for reorganization of the defendant, Penn Central, was duly filed with the District Court of the United States for the Eastern District of Pennsylvania and thereafter the defendants, Robert W. Blanchette, Richard C. Bond and John H. McArthur, were duly appointed Trustees of the property of Penn Central Transportation Company, and said Trustees duly qualified thereunder and are presently acting in their capacity as such.

3. The Trustees of the defendant, Penn Central, had and still have supervisory powers and control over the management and operations of the defendant, Penn Central, and its personnel.

4. At all of the times herein mentioned, defendant, Penn Central, owned a railroad terminal and building in the City, County and State of New York, commonly known as Penn Station at or near 34th Street, in the Borough of Manhattan.

5. At all of the times herein mentioned, the defendant, Penn Central, operated, maintained, managed and controlled the aforesaid structure, building and railway station.

6. At all of the times herein mentioned, the defendant, Penn Central, owned certain railroad trains which ran between Penn Station in New York and Washington, D. C.

7. At all of the times herein mentioned, the defendant, Penn Central, its agents, servants and/or employees, operated, maintained, managed and controlled as a common carrier of passengers trains between Penn Station and Washington, D. C. which were operated on the said railway system.

8. On or about the 13th day of April, 1975, there existed in Penn Station an escalator to connect a portion of the main concourse with the platforms for tracks 12 and 13 at Penn Station.

9. On or about the 13th day of April, 1975, and for sometime prior thereto, the defendant, Penn Central, owned the aforesaid escalator.

10. On or about the 13th day of April, 1975, the defendant, Penn Central, operated, managed, maintained and controlled the aforesaid escalator.

11. The aforesaid escalator was located at or near a Horn & Hardart and what is believed to be the stationmaster's office in the Penn Central terminal.

12. On or about the 13th day of April, 1975, plaintiff had purchased a ticket on the Penn Central for the express train to Washington, D. C. which was scheduled to leave Penn Station at approximately 10 A.M. on April 13, 1975.

13. On or about the 13th day of April, 1975, at approximately 9:45 A.M., after plaintiff had purchased her ticket on the aforesaid Penn Central train to Washington, she

was descending to the train platform to board the aforesaid train when the escalator upon which she was riding suddenly reversed itself causing plaintiff to sustain severe personal injuries thereon.

14. The aforesaid occurrence and the injuries and damages inflicted upon this plaintiff thereby were caused solely by reason of the negligence of these defendants and their agents, servants and/or employees in the ownership, operation, management, maintenance and control of the aforesaid escalator.

15. The aforesaid occurrence and injuries and damages inflicted upon this plaintiff thereby were caused without any contributory negligence on the part of plaintiff proximately contributing thereto.

16. As a result of all of the foregoing, plaintiff sustained great bodily injuries with accompanying pain; she was rendered sick, sore, lame and disabled, and, upon information and belief, sustained injuries of a permanent and lasting nature; she was obliged to and did expend large sums of money and incur debts for medical aid and attention in an endeavor to alleviate her suffering from the injuries sustained in this occurrence; and she was incapacitated from attending to her usual occupation, activities and enjoyments.

17. By reason of all of the foregoing, plaintiff has been damaged in a sum in excess of $10,000.00.

WHEREFORE, plaintiff demands judgment against the defendants in a sum in excess of $10,000.00, together with the costs and disbursements of this action.

FUCHSBERG & FUCHSBERG
Attorneys for Plaintiff
250 Broadway
New York, New York 10007
(212) 962-2800

(Verified by Norman Leonard Cousins, Attorney, May 12, 1975.)

Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

Defendants Robert ... Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of the Penn Central Transportation Company, sued herein as Trustees of the Property of Penn Central Transportation Company, Debtor, for their answer to the plaintiff's complaint herein:

I. Deny upon information and belief each and every allegation contained in paragraphs numbered Three, Four, Six, Nine, Thirteen, Fourteen, Fifteen, Sixteen and Seventeen of the complaint.

II. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs numbered Eleven and Twelve of the complaint.

III. Deny upon information and belief each and every allegation contained in paragraph numbered Five, except admit that the Trustees of the Penn Central Transportation Company operated a building and railway station commonly known as Penn Station.

IV. Deny upon information and belief each and every allegation contained in paragraph numbered Seven, except admit that the Trustees of the Penn Central Transportation Company operated a common carrier of passengers between Penn Station and Washington, D. C.

Answer

DEFENDANTS ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR, AS TRUSTEES OF THE PROPERTY OF THE PENN CENTRAL TRANSPORTATION COMPANY FURTHER ANSWERING AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE TO THE CAUSES OF ACTION, IF ANY, ALLEGED IN THE COMPLAINT ALLEGE:

V. If plaintiff Elizabeth C. Munroe was injured, as is alleged in the complaint, her own negligence contributed to such accident, injuries and damages.

WHEREFORE, defendants Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of the Penn Central Transportation Company, demand that the complaint herein be dismissed, with costs.

Dated: New York, N. Y.
July 1, 1975

CONBOY, HEWITT, O'BRIEN & BOARDMAN
By Thomas V. McMahon
Member of Firm
Attorneys for Defendants
20 Exchange Place
New York, N. Y. 10005
344-3131

TRANSCRIPT.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELIZABETH C. MONROE, Plaintiff, vs. ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. McARTHUR, Trustees of the Property of Penn Central Transportation Company, Debtor. Defendant.	75 Civil 2913

Before:

HON. MARVIN E. FRANKEL,

District Judge

July 26, 1976
9:30 a.m.

APPEARANCES

FUCHSBERG & FUCHSBERG, ESQS.,
Attorneys for Plaintiff
BY: NORMAN LEONARD COUSINS, ESQ.,
of Counsel

CONBOY, HEWITT, O'BRIEN & BOARDMAN, ESQS.,
Attorneys for Defendant
BY: THOMAS V. McMAHON, ESQ.,
of Counsel

(A Jury of six and two alternates were duly impaneled, accepted and sworn.)

THE COURT: Ladies and gentlemen, let me just say a few words more about your responsibilities now that you are the jury and the alternates in this case. I told you a few minutes ago that your responsibility is to decide the facts, decide what truly happened on the occasion in question, and then to apply the few rules of law that I am supposed to give you by way of instructions to those facts in your effort to reach a just verdict. You all know the things I am going to tell you, but I am going to remind you of them now that you are to administer to this procedure.

What you use for finding the facts is evidence. I have already stressed to you that you must consider only the evidence that you hear in this case as it is presented to you and not things that you know or think you know from somewhere else. Evidence, as all of you know, is in our system primarily a couple of kinds of things. One, it is sworn testimony from people who were involved, or in some way say they know something about the events that are in question. Evidence may include exhibits, things or papers that are received as part of the record, and basically those are the materials from which you undertake to re-create the

truth, re-create the events that are in issue.

I mention that in order to stress to you right from the beginning, and ask you to bear in mind throughout what I think will not be a very long trial, some of the kinds of things that are not evidence. Please remember that the things that I say to you and the things that I say to you and the things that the attorneys say to you or to anybody else are not evidence. We were not witnesses, we didn't see or experience any of the things involved in this case, and so we could not give evidence.

If a lawyer or a judge has evidence to give, he gets on the witness stand and swears to tell the truth like anybody else, and he gives it. But we don't mix these functions together. That's important because you are also aware that lawyers and judges are trained to be somewhat contentious, lawyers are selected in cur system to represent one side as loyally and as well as they can. They may be led in the nature of their vocation to ask questions that sound as though they expect a particular answer.

Remember that the question without an answer is not evidence. The lawyer cannot give evidence. So if you bear that in mind, you will be helped to focus on what you are to care about, which is the evidence in the case.

The first step in the trial procedure is an opening statement. Each attorney has a right to give to you a kind of outline or forecast of what he says the evidence will or will not show. That's a kind of useful procedure or we wouldn't have it. It gives you a framework of sorts on which to proceed to pay attention to the evidence or to the lack of evidence as the case goes along. But you must remember, as I just finished telling you, that when the attorney sits down after making the opening statement, you haven't heard any evidence. You have only heard somebody's version in variance of what the evidence may be. Please remember that throughout and it will help you and all of us to do this task justly.

I think if Counsel are agreeable, we will have the opening statements and then take a short recess during which our clerk can show the jurors where the jury room is, which is where you will meet during recesses and in the morning and after lunch when we are not actually sitting. After that recess we will commence the taking of the evidence.

Now, as I say, let's have the opening statements first.

Mr. Cousins?

MR. COUSINS: Judge Frankel, Mr. McMahon,

ladies and gentlemen. At this point at the trial I'd like to sort of encapsulate for you what this case is going to be about. As Judge Frankel has already told you, it is, of course, a personal injury case. It is a case that has been brought on behalf of Mrs. Monroe whom you have already met because she was very severely injured on an escalator at Penn Station after she had purchased a ticket to ride on one of the Amtrak trains at Penn Station to Washington, D.C. It was a regularly-scheduled run on a Sunday morning, last year, on April 13. This particular train was numbered 161 and it was due to leave Penn Station at 10:00 A.M.

One advantage that we as attorneys have had that you folks haven't, and in fact even the Court has not, is that we spent hours, probably close to 100 hours taking extensive depositions, which is testimony under oath of the parties involved in this case and some of the people from Otis Escalator Company who installed this escalator and built it and installed it at Penn Station back when Madison Square Garden was first built. What I am going to do at this time is take what I have learned from these depositions and examinations of the witnesses and tell you a little bit about what I suspect the testimony during this trial will be.

Mrs. Monroe, at the time of this accident was

75 years of age. She was a widow, her husband had been with the railroad most of his life before he passed away, and on this particular Sunday, last year, April 13, she was on her way to visit one of her sisters in Washington, and she had taken the Long Island Railroad train into Penn Station and got there about eight o'clock in the morning and had breakfast at a Horn & Hardart which happens to be adjacent to the upper level of this particular escalator.

During the trial you will probably hear a great deal about the term "B 7." At Penn Station the railroad company has assigned various arbitrary numbers to the escalators so you will know exactly which one we are talking about. If there is an accident, they can say go to B 7 and someone knows exactly where that is. B 7 escalator was identical to all the other escalators at Penn Central, the same 32-R model number manufactured and built by Otis and installed by them at Penn Station. They all operated the same way, looked alike and were virtually identical. This particular accident occurred on the escalator known as B 7 which ran from the upper concourse.

There are two passenger concourses, and some of you probably know this better than I from using the station yourself. There is the upper and lower concourses

both of which have escalators going to the various trains. At Penn Station all the trains are on the track level. As is the custom and practice, they announce the boarding of the train approximately fifteen minutes before its departure time. They put it up on a board, the person usually makes an oral announcement on the Public Address System, and of course there is the Information Booth and various ushers who wear dark conductor's uniforms and a cap to assist passengers in the boarding of the trains, the announcing of them and the giving out of information.

Indeed, on this particular morning it was no different than any other day. At approximately 9:45 the announcement was made, "Now boarding Train 161 at Track"-- I believe it was 17 and 18, but we will doublecheck that again. The way the escalators are set up at Penn Station is that one escalator can service both trains. A given escalator, and that applies to all of them, is used both for ascending and descending, depending upon how the usher who is in charge of the operation of the escalator sets it. Of course, when there is an arrival of the train, the usher will turn it counterclockwise as he looks at the control, the little key, and that starts the escalator ascending.

For boarding, as we have in this particular

case, he would -- either if the escalator was not stopped, he would press an emergency stop-button to stop it or if he is already stopped he will just turn the key clockwise which starts the escalator descending. The Horn & Hardart was right adjacent to the top of the B 7 escalator. When she got through with breakfast that morning, she had come out to wait for the train and she was in fact chatting with the usher, Mr. Cadogan, Lloyd Cadogan, who was an employee of the Penn Central, as an usher, and whose job it was to make the announcements of the boarding, operate the escalator, operate the doors to it and see to it that the train was ready for boarding and that the operation of boarding began on time for the train to leave at ten o'clock.

Mrs. Monroe chatted for a few minutes about her trip -- she was going to visit her sister in Washington -- with Mr. Cadogan. About 9:45, the usher, Mr. Cadogan, got the "okay" from the train crew to board the train. I believe the doors this particular morning when he got there were already open, so it was merely remaining for him to start the escalator descending by turning the key clockwise. He put the sign up on the board. I think it said "Trenton, Philadelphia, Baltimore and Washington."

Mrs. Monroe, in this particular case, because she had been there so early having had breakfast was in

fact the first person on the escalator. Mr. Cadogan had turned the key in order to do this. It would be a little helpful to show you where the controls are on this particular escalator. There are two sets of controls, one at the top of the escalator, this would be the upper concourse; and the other at the track level, so that in an emergency you could shut them off at either place.

Assuming Mrs. Monroe was standing here and here is the escalator going down to the track platform the skirt or the side of the escalator would be on her left and a similar portion of it on the right. The controls for it are about midway down, this is a pretty fair height. Mr. Cadogan said it was approximately three feet from the floor to the top, three, maybe three-and-a-half feet, and the controls for it are just about in the middle, two feet, maybe a foot-and-a-half down from the top.

The controls consist of an emergency stop-button and a little further down, perhaps an inch-and-a half, a standard type keyhole which was spring loaded so that in order to -- let's assume hypothetically the escalator is ascending and he wants it to descend. He must first press the stop-button and the escalator comes to an instant stop and then you put in the key and if you want it to go down you turn it clockwise. This key or the

receptacle is known as spring loaded so that as soon as he lets go of the key, it should come back to the center position and then he removes it.

The escalator is designed in such a way so as to prevent an inadvertent changing of direction while people are on it, which obviously could cause an accident. The escalator must first be stopped. So you must push the button and then insert the key and change the direction of it. It is possible for the escalator to be stopped and reversed with people on it. But it is the job of the usher to see to it that before he does change direction of it no one is on it, for the obvious reason that he told us about in his deposition and you will hear about it.

On this particular occasion, Mrs. Monroe was told by Mr. Cadogan "It is okay to board the train," and she was the first person to get on. Approximately twenty-one steps, escalator steps, run from the top to the bottom. According to Mr. Cadogan, when Mrs. Monroe got on the escalator, if you recall they are flat at the top and then the steps start to separate, they remain a constant distance and then the steps flatten out.

There is a police officer, Sova, an employee of the Penn Central Railroad, a private police officer of the Penn Central, he told us that the width of the steps is

about two-and-a-half feet wide, a metal standard-type escalator step. When she is approximately seven steps down, approximately one-third of the way, holding on with her left hand onto the railing, the standard black rubber-type railing that runs along the side, she has in her hand a rather small overnight bag, she was only going to stay until Tuesday, she had two dresses in it, not any shoes, quite light, and she also had her pocketbook in her hand. She didn't put them on the steps. She was holding them. The case was just a little bigger than my own attaché case right here.

As she got to approximately seven steps down in terms of the steps moving, she was standing still on the initial step that she had gotten on the entire time, she noticed her hand starting to go back, and in fact she thought she was going to fall and held on quite tight. Normally the two railings on the escalator move at approximately the same speed as the steps so that obviously you can hold on and your hand should stay next to your body as you go down.

But in this particular case, due to a mechanical malfunction having to do with the maintenance of this escalator that you will learn about during the course of the trial, a malfunction did indeed occur. This table is just

about the length -- of course it is horizontal and our escalator is at an angle, but the length is quite accurate.

She started off holding on to the railing with her hand at her side. As she got about seven steps down, her arm started to go back. Of course, nobody expects an accident to happen. I have never seen this happen and Mrs. Monroe hasn't, and the two thoughts that came to your mind were, was the railing going up, did it stop and the steps were going, or what exactly happened -- but the instinct, of course, when she starts to go back, is to hold on.

Certain things are clearly undisputed. She didn't trip over anything and nobody pushed her. Prior to this incident happening there was no problem with the escalator, the first seven feet of descent was fine. But this apparent reversal of the railing did indeed occur. I use the word "apparent" because from the investigation of the mechanics, which of course, Mrs. Monroe does not know, of how this really occurs, the railing did not reverse itself at all. It couldn't have.

What happened was the railing stopped. It stopped because it was improperly installed, improperly maintained and it was not, by the way, installed by Otis, because the defendant, Penn Central, elected not to avail themselves of a maintenance-service contract with Otis who

were the professionals who designed and built this escalator. They decided to do it themselves. Indeed, a few months before this accident they had purchased from Otis a new railing and decided to do it themselves. Indeed, a few months before this accident they had purchased from Otis a new railing and decided to install it themselves rather than have Otis' professionals do it. If it is not installed properly, it can heat up and bind, resulting in stopping, and then when the gears of the railing get out of synchronization with the gears of the steps, there is a clicking sound, and you will hear more about that during the trial, both from the plaintiff and from the defendant.

But the motor and gears which drive the steps are very, very powerful, much more so than the railing. The railing -- there is a tremendous motor that drives the steps. What happened is as the escalator got about seven steps down, the railing stopped and the steps kept going along with Mrs. Monroe, as a result of which her arm started to go back. But the railing had not really reversed itself. It seemed like it. It just stopped. The steps kept going. You don't know what happens in that split second. The explanation is a little easier for us now in hindsight and I think we will have no problem following it as we go along: The railing stopped, the steps kept

going; her arm goes back, and she starts to fall back; and indeed turned and sustained three fractures of her lower leg. She fractured the inside bone, what we call a medial malleolus, and indeed when that occurs you have what is known as a bimalleolar fracture. This was so severe that it also fractured something more than that, the talus, in the back, resulting in a trimalleolar fracture. A breaking of the three major bones of the foot.

In a woman of age 75, it has left her permanently crippled. In fact, her daughter who had been teaching and is nowhere near retirement age left her job--she could, her husband fortunately was working -- left her job to take care of her mother who to this day must use a cane every single day to get by. In fact, you will hear testimony that to get to the doctor's office ambulance people had to be called just to assist her -- this is after she got out of the hospital -- to assist her downstairs and into a car to go for medical treatment. A woman who would travel by herself to Washington, was totally independent, she took care of her own home, her own life, she saw her family throughout the country, in excellent health for a woman of 75 years of age, is converted through the cross-cutting and shaving of good maintenance practices by the Penn Central into a woman who cannot get about by

herself anymore, who cannot care for her own home anymore, who has a badly swollen and discolored which you will see in court, a year-and-a-half after the accident, who still must use a cane, and who is dependent on her daughter to help out with the shopping, cleaning, cooking, getting about, who must constantly be a burden to other people, despite her tremendous pride in always being independent, healthy and never dependent upon anybody.

When the usher heard the tremendous commotion on the escalator, because, indeed, there are numbers of people who boarded this train, there was a man standing behind Mrs.Monroe, who, in fact, as she started to go back, he grabbed her -- fortunately he was there, but, of course, her own weight and the bending of it -- if you recall, by the seventh step down, the steps are fairly wide apart, so with her weight and the bending backwards, the foot was broken in three places and she would have gone completely to the bottom but he grabbed her -- and said, "I've got you," and he held her until the usher, Mr. Cadogan, came over, shut the escalator down, pushing the emergency button. Some other people on the escalator took her overnight -- her tote bag, passed it up, and then a number of people, either police officers or the usher -- of course they all wear these dark uniforms, and some of

the people on the escalator carried her up to the top, to the area near the Horn & Hardart, and got her a chair, they tried to get a wheelchair but apparently none was available and called an ambulance, and she was taken to French Hospital here in New York where the fracture was so bad that they couldn't set it properly, and indeed had to reset it later on.

She was hospitalized not for a week or ten days, but for over a month before they could even let her out of the hospital. That's how bad the fracture was. She spent months in a long cast, then a shorter cast, anothr cast, had to go back to the hospital later on as an out-patient and had to go through this tremendous amount of pain and suffering absolutely needlessly because of cost-cutting on the maintenance of an escalator which is not supposed to malfunction if it isproperly maintained. The hospital bills are enormous. We will put in a certified copy of that during the course of the trial. She had expenses everytime she had to go to the doctor. She had separate bills for the doctors. She had to get people to help out in the house. All these expenses were brought about as a result of this accident.

Of course, the plaintiff has to prove this case, and that's our job. In addition to denying, of

course, all the allegations of impropriety in the operation and maintenance of this escalator, the defendants have raised an affirmative defense. They claim in their pleadings filed by their lawyers that this accident was due to the negligence, carelessness, of Mrs. Monroe. She caused this accident.

As the trial goes on, I'd like to hear how this woman who is standing on an escalator going from the upper platform to a train -- she has a ticket in her hand -- I want to hear how she caused this accident.

Thank you very much.

MR. MCMAHON: I feel like folding up my tent and going home. You know, there are two sides to every story, and frankly I don't know how this accident happened. I am glad to hear now how it did happen, but I did want to caution you and remind you of what the Judge said to you in the very beginning. All we are here is advocates. We just try to get together some facts and witnesses and evidence, papers, and so on, and present them to you.

But, not one thing I say is any part of the evidence in this case. By the same token not one thing that Mr. Cousins says, and it was for about a half-an-hour or better, was in any way evidence in this case. He is supposed to tell you what he expects to prove, and that was

an elaborate display, and I am going to briefly tell you how I am attempting to meet that burden.

I represent the trustees of the Penn Central Transportation Company who operate Penn Station and included therein are escalators. Some run to the passenger concourse or -- which is where you get the train -- and others go to what they call the exit concourse, shorter ones, not the same as the ones that are upstairs. These are reasonably new, these long ones. They were put in when the new Madison Square Garden was built and the station was refurbished.

Of course, I believe they are what can be described as like electronic devices these days. I don't know what goes inside the mechanism. They are operated by ushers who are employed by the railroad. Mr. Cousins was right in his explanation of the key mechanism and the button. But I don't know whether we are cutting costs or what, but I do know that we have what we think are good mechanics who inspect these escalators on a regular basis.

What they do is -- as a matter of fact, this accident happened on April 13, 1975. We know that on April 12, 1975 the escalator was inspected and it was working properly. We know that on April 14, 1975 the escalator was inspected and it was working properly. We know that

on April 13, the day of this accident, Mr. Cadogan, who was operating the escalator insofar as the button is concerned, said that it was working properly.

I said to you, I don't know what happened. I wasn't there and neither were you. When the accident occurred, Mrs. Monroe was on the escalator. Mr. Cadogan, the usher, heard some shouts, "Stop the escalator," or something, and he stopped it. He saw Mrs. Monroe in a fallen-over position on the escalator. That doesn't indicate to me that she fell backwards. He cleared the people off from one-third of the way down, roughly, up. He went down and with the help of two people in front of Mrs. Monroe, not behind, they carried her up the steps and they waited for a Railroad Patrolman to come who, incidentally, is not a private guard or -- and there is nothing wrong with private guards, believe me, but he is a New York State Railroad Policeman assigned to the Penn Central Transportation Company. He comes off the New York State Railroad Roster.

When they carried her back she wasn't in any pain, and you will hear from the usher that he was amazed because he could see that she was injured that she didn't complain at all. They called the ambulance right away and they took her to the hospital where she had the cast.

I said to you the only way that I can get the story out of Mrs. Monroe before you and theonly way that Mr. Cousins can get the story out of the railroad is by depositions, of course. The railroad trustees had lawyers and the plaintiff had lawyers. Of course, They talk to their lawyers naturally before taking the deposition or before they come to trial. Mrs. Monroe said that when the escalator -- under oath, in her deposition, when the escalator was going down, the whole thing reversed. Not just the handrail, but the steps. Everything reversed.

If that's the case, can you imagine what would have happened to those people on the escalator if what she said was the fact? There would have been a disaster. Also when she got back by Mr. Cadogan, with the help of the other two gentlemen, to the top of the escalator, the patrolman came over and asked her what happened. He has no ax to grind. What happened? We want to protect people. What happened? She told him "My foot got caught," and that was all. "Somehow my foot got caught."

Not that the escalator stopped and reversed suddenly or the handrail only stopped and reversed, because the way she described it and the way Mr. Cousins described it, if the handrail is going back up, she said, I believe,

on deposition, at one point, "The men behind me held on to me and said, 'We won't let you fall'." I don't know. I do know this: that there were other reasons for her going down to Washington other than to see her sister. She had a doctor down there and she told me she had no difficulty with her legs before this at all.

Maybe she did and maybe she didn't. I don't know. But we are going to do the best we can under the circumstances. We have a situation that an accident happened on property owned by somebody, just because of the mere fact of ownership doesn't mean that we are responsible for it. You all understand that. But you listen to the evidence and you watch the individuals who partake in the trial. You determine in your own mind, not because of what I say or what Mr. Cousins says at any time, who is responsible. It may be when you find when you deliberate that this was one of these unfortunate accidents where nobody was wholly responsible. I dont know. I am not going to tell you how to judge the case. You have to tell us.

THE COURT: Before we take a recess, let me mention that the rule in this court is that whoever gets seat Number 1 on the jury becomes the foreperson of the jury. So you are the forelady of this jury. With

that let's take ten minutes and then we will proceed to taking evidence.

(Jury not present)

MR. COUSINS: Mr. McMahon tells me he has an objection to taking depositions taken of the railroad employees taken by them. I don't understand why I can't read those depositions which were taken under the procedures--

MR. McMAHON: In the Federal Court only an officer, agent of the party can be read.

MR. COUSINS: Federal rules of civil procedure, the ones which state your reading the depositions of any party or any employee.

THE COURT: Any employee?

MR. COUSINS: That is what it says.

THE COURT: Read it to me. You mean the rules of evidence?

MR. COUSINS: Yes. For the record, your Honor, I am referring to Article 8, Hearsay Rule 801, definitions, it appears to be sub-section A 2. Under the category admission by party opponent, but it includes employees, anyoneproduced in a representative capacity in the course and scope of business, etc.

THE COURT: You are relying on Rule 801 D 2, statement by agent or servant concerning a matter within the

scope of his agency or employment made during the existence of the relationship.

MR. COUSINS: Right. All those criteria were met here.

THE COURT: Okay. We will start at 12:00.

MR. McMAHON: Wait a minute. This is the hearsay rule.

MR. COUSINS: An exception to the hearsay rule.

MR. McMAHON: I am not talking about rules of who may be deposed. I didn't produce these employees as parties, only a deposition of a party is by a managing agent, an officer or director.

THE COURT: You don't dispute the authenticity of the transcript of the deposition, do you?

MR. McMAHON: No, sir.

THE COURT: Then we will receive it. It is the statement of the employee made at a deposition. It would be hearsay, except for that rule of evidence.

MR. McMAHON: It wouldn't be hearsay. Hearsay has nothing to do with this whatsoever, Judge.

THE COURT: If he reads it here it is hearsay because you can't cross-examine the declarant. Of course, you can bring these people in.

in.

MR. McMAHON: They are here right now.

THE COURT: Then, fine, you have no problem. You can cross-examine them about that. I don't know what we are debating then.

MR. McMAHON: Just let me say I object to the reading of a deposition of a non party, whether or not they are employed by the railroad.

THE COURT: Okay.

MR. McMAHON: In a capacity other than officer, director or managing agent.

THE COURT: Did you have something else?

MR. COUSINS: Yes, your Honor, I have a number of depositions to read. Would it be possible for Counsel to have water at the table?

THE COURT: Are you going to start with the depositions?

MR. COUSINS: Yes.

THE COURT: Yes.

(Recess)

(AFTERNOON SESSION)

(Jury present)

THE COURT: All right, Mr. Cousins.

MR. COUSINS: My first witness will be in the form of a deposition of the defendant Penn Central Transportation Company by Richard E. Sova who is a Penn Central Police Officer who was at the scene. Before beginning reading, I would like to indicate that from the formal pleadings in the case OO

MR. McMAHON: Look, I don't mind a reading of the deposition at this point. Your Honor has overruled my objection. I do think we ought to just read the deposition and let it go at that.

MR. COUSINS: I would like to apprise the jury --

MR. McMAHON: Oh, no.

THE COURT: Wait just a second. I don't know what he is about to offer the jury. Please. When I hear it I will rule. Then you may object.

MR.McMAHON: Can we do it at the side bar, Judge?

THE COURT: I don't think so. Go ahead, please.

MR. COUSINS: Your Honor, there are two things I merely wish to apprise the jury of. One, which I am

entitled to read, formal answers to interrogatories in this case, and the other are the formal judicial admissions so the jury knows what is admitted; the ownership; operation and control.

THE COURT: Do you object to that?

MR. McMAHON: No, sir. But just do it without --

THE COURT: Please. Let's make a ground rule, Mr. McMahon; let Counsel finish what he proposes to do before you interpose objections. You would have been spared the trouble if you had let him finish. Go ahead.

MR. COUSINS: The defendant Penn Central Transportation Company, by its attorneys, formally admits, that they operate, meaning the trustees on behalf of the railroad, operate a building and railway station commonly known as Penn Station and they further formally admit that they operate as a common carrier of passengers between Penn Station and Washington, D.C. They have also formally admitted in the pleadings filed in this case that they are a foreign corporation, a Pennsylvania corporation, duly authorized and existing under and by virtue of the laws of the State of Pennsylvania, that they are presently operating pursuant to Court-appointed trustees. that at all times involved in this case, the accident and since then, the Penn Central operated. maintained, managed and

control the structure, building and railwa, ation involved in this case.

They further formally admit that the defendant Penn Central by its agents, servants and employees operated, maintained, managed and control as a common carrier of passengers trains between Penn Station and Washington, D.C., which were operated on the railway system.

MR. McMAHON: Excuse me, your Honor. That is the problem. That is just not true. We only admit operation, period.

THE COURT: Let me see what you are reading from.

MR. COUSINS: Number 7.

MR. McMAHON: Deny upon information and believe each and every allegation contained in paragraph 5, except admit, "operate a building and railway station commonly known as Penn Station. 4: Deny upon information and believe each and every allegation contained in paragraph 7 except admit that "the trustees of the Penn Central Transportation Company operated a common carrier of passengers between Penn Station and Washington, D.C."

MR. COUSINS: I will accept that. I withdrew what I said, other than as to operation. Admit they operate. I apologize. Thank you. The defendants

by their attorneys formally admit that on or about the 13th day of April, 1975, which is the day of this accident, Penn Central operated, managed, maintained and controlled the escalator involved in this case.

MR. McMAHON: That isn't true either.

MR. COUSINS: I disagree. No. 10. If I am missing something, please tell me. You have partially denied 5 and 7 but there is no denial of 10.

THE COURT: Go ahead.

MR.McMAHON: I believe that's the fact anyway, Judge. There is no dispute of that.

MR. COUSINS: Your Honor, at this time I would like to read from the deposition of Richard E. Sova, an employee of the Penn Central Transportation Company, which was held during the course of this case on October 9, 1975, at the office of Mr. McMahon, Conboy, Hewitt O'Brien and Boardman.

I am beginning reading on page three, sir, "Examination by Mr. Cousins:" That's myself. On page 3.

Q "Q State your full name and address, please?

"A Richard E. Sova.

"Q Mr. Sova, by whom are you presently employed, sir?

"A Penn Central Transportation Company.

"Q How long have you been employed by them?

"A Three years.

"Q During the three years with them have your duties with them always been the same?

"A Yes.

"Q What are those duties?

"A I am a police officer.

"Q Do they have any ranks in their police department?

"A Patrolman.

"Q Were you employed as a police officer by any other agency prior to joining the Penn Central?

"A No.

"Q May I have your age and date of birth, sir?

"A My date of birth is 10/14/46.

"Q You are 29?

"A Yes, I will be 29.

"Q When you first joined the Penn Central Transportation Company, where were you assigned?

"A When I first joined I was assigned to the train yard in South Kearney, New Jersey.

"Q Did the time come when you were transferred or assigned to the Penn Central Railroad Station here

in New York City?

"A The way we work it we can bid a job depending upon the man with the most seniority. If the job is available, you can pick a job. If you like this job and if you are the senior man, you get the job.

"Q Well, after joining the Penn Central did you bid to be assigned to the Penn Central in Manhattan?

"A Yes, I did.

"Q When were you assigned there?

"A Approximately May 14, 1974, I am not sure of the exact date.

"Q When you were first assigned there in May of 1974 was that as a patrolman or police officer?

"A Yes.

"Q Did you wear a uniform or wear plainclothes?

"A Uniform.

"Q Will you describe for us the color of the uniform you were wearing?

"A It is a light blue shirt and dark blue pants.

"Q Any jacket?

"A Only in the wintertime. Depends on the weather outside.

"Q Light blue shirt and dark blue pants?

"A Yes.

"Q Armed?

"A Yes.

"Q Do you have any recollection of April 13, 1975?

"A I do, yes.

"Q Had you been assigned from May, 1974 right up to April, 1975 at Penn Station?

"A Yes.

"Q Are you still at Penn Station now?

"A Yes.

"Q On April 13, did you see your tour supervisor?

"A Lieutenant Rockefeller.

MR. COUSINS: I will go back to the preceding page.

"Q At Penn Station is there someone who delegates where the various police officers are supposed to be stationed?

"A Usually the tour supervisor.

"Q On April 13, did you see your tour supervisor?

"A Lieutenant Rockefeller.

MR. COUSINS: Page 7, line 15.

"Q Were you on patrol with anybody else or by yourself?

MR. COUSINS: This refers to April 13.

"A This was actually in the upper level. I go down to check the trains as they arrive in for any thefts. I came back through the escalator, back to the upper level on the 9 or 10 track, that's the escalator I used. The escalator coming to the lower level to my post was out of order.

"Q What number or designation does the escalator have that was out of order?

"A I don't know.

"MR. McMAHON: It goes to the lower platform, the lower Concourse?

"THE WITNESS: From the lower Concourse to the tracks it goes. That was out of order and I used the one from the tracks to the upper level.

"MR. MCMAHON: Do you know whether it was out of order or turned off?

"THE WITNESS: It was turned off. They weren't using it. They had it blocked off with boards on both ends. That's why I used the 9-10 track.

"Q They had boards at the bottom and top?

"A Yes.

"Q When they just shut down an escalator to shut it off, they don't normally put boards at the top and bottom?

"A If it's out of order, they do.

"Q To just shut it off they don't put boards at the top and bottom?

"A No.

"Q How do they normally shut it off?

"A That's the way, by pushing the stop-button.

"Q Are those escalators operated by key?

"A To change the direction, yes.

"Q To change the direction you have to shut the escalator off first?

"A Yes. You shut the escalator off and change the direction.

"Q In other words, the way to change an escalator from descending to ascending would be to push the stop-button and then turn the key and push the start-button?

"A No. When you turn the key it starts.

"Q Are you familiar with the escalator number B 7 at Penn Station?

"A Yes. That's the one going from -- I believe it's 13-14 Track for that train concourse.

MR. COUSINS: I believe I said 17 and 18 in my opening. That's incorrect. It is 13 and 14. Platform 7.

"Q An escalator descends to a platform between two tracks; is that correct?

"A That's correct.

"Q So that Track 13 would be on one side of the platform and Track 14 would be on the other side of the platform?

"A That's correct.

"Q So that this enables one escalator to service the platform for two tracks; is that correct.

"A That's correct.

"Q So B 7 would be the escalator that goes to t platform that has Track 13 on one side and Track 14 on the other side?

"A Yes.

"Q Do you know the make of the B 7 escalator?

"A I believe it is Otis, but I am not sure.

"Q We will leave a space and if you find that is not correct, you can just change it, okay?

"A Yes.

MR. COUSINS: That was not changed. I think we will agree that it was an Otis elevator.

You have no objection?

MR. MCMAHON: No, no.

"Q Had that same escalator, the B 7, been there

the whole time you had been assigned to Penn Station?

"A Yes.

"Q Do you have any knowledge when that escalator was first installed?

"A No, I don't.

"Q Can you describe the steps? Wood or metal?

"A They are metal steps.

"Q Do they have various ribs on them?

"A Yes.

"Q And those are metal?

"A Yes.

"Q Can you tell us the approximate width of each step?

"A I would be just guessing.

"Q Don't guess but give us your best approximation.

"A Approximation would be two-and-a-half to three feet.

"Q The B 7 escalator went from the platform to track 13 and 14 up to what?

"A The area designated as the train Concourse for the upper level.

"Q At the top of that particular escalator was there a Horn & Hardart store near there?

"A There is one to the left of the entrance.

"Q To go down?

"A Yes.

"Q As a person is about to go down the escalator through the gate -- there is a gate, isn't there?

"A Yes.

"Q The Horn & Hardart would be to the left?

"A Yes.

"Q About how far away?

"A About five or six feet.

"Q In order to go onto the escalator does a person have to pass through any gate?

"A There are two doors which open and close manually. They were open to permit access down the escalator.

"Q Were there any trains on the upper level?

"A No. All the train traffic is one level.

MR. McMAHON: The track level.

"Q The B 7 escalator connected the track level of 13 and 14 to which level, the lower or upper.

"A The "train" concourse, the upper level.

"Q In other words, you don't have to be on the lower level to go onto the train-track platform?

"A No.

"Q Are there any trains on the upper level or is that strickly a concourse for people to run around?

"A That's strickly a concourse.

MR. COUSINS: Line 20.

"Q Are all trains accessible from both the lower and upper levels?

"A Yes.

"Q In other words, a person could have gone to Track 13 or 14 from the lower level?

"A Yes. It is usually used as an exit, but they can go from there.

"Q From the top of the escalator B 7, is that one straight escalator all the way down to the train platform?

"A Yes.

"Q From the top to the bottom all the way down, what is the length of that escalator?

"A One hundred feet? Maybe forty to fifty feet. I don't know.

"Q For the B 7 escalator, that terminology, that designation refers to just one escalator; is that correct?

"A Yes.

"Q Do you have any knowledge of what, if anything,

the letter "B" stands for in the terminology B 7?

"A I have no idea.

"Q The terminology B 7 designates one specific escalator so we can't confuse it with any other?

"A That's right.

"Q Of all the escalators which go from the upper level to the track level, are they all basically the same escalators?

"A Yes.

"Q As far as you know, they are all Otis and they look alike and they are the same?

"A Yes, as far as I know.

"Q The B 7 escalator, did that both ascend and descend?

"A Yes.

"Q Do you know what the criteria was or on what occasion the escalator would go up and down?

"A It would go down when they were loading the train.

"Q For departures?

"A Yes.

"Q And when an in-coming train was coming in, it would be ascending?

"A Yes.

"Q When they are not using an escalator, do they customarily shut them off?

"A No. They customarily have them running up.

"Q" Why is it left running up?

"A" The reason for that is if there is anybody down and there is a fire or emergency condition, they can get up and it would also prevent people from the upper level from descending down where they had no right to be.

"Q Do you know where the controls were located for the B 7 escalator?

"A What do you mean by the "controls?"

"Q To make it go up or down.

"A There is one at the base of the escalator at the track level and there is one at the top on the "train concourse"on the upper level.

"Q When you say the "train concourse," it is right on the escalator itself?

"A Yes.

"Q Can this escalator, short of a massive power failure, be shut down from any place other than from the escalator itself.

"A Not to my knowledge. I really don't know.

"Q As far as you know there is no remote controls for the escalator?

lhtg

"A Not as far as I know.

"Q Are the controls at the top and bottom basically the same in that you press a button to shut it off and a key to change direction?

"A Yes.

"Q Is there a button at the top and at the bottom?

"A Yes.

"Q Together with the key?

"A That's right.

"Q Do you know the name of the person who was in charge of the B 7 escalator on April 13, 1975?

"A What do you mean "in charge?"

"Q Who would actually stop it and turn the key to change the direction when that needed to be done?

"A No, not offhand.

"Q Are you familiar with the name Tettemer, a station master?

"A I am, yes.

"Q Do you know if he operates the escalators?

"A He doesn't himself, no. He has ushers who load the trains who operate the escalator.

"Q The people who change the direction of the escalators, they are called "ushers?"

lhtg

"A Yes.

"Q Are those the same people who operate and close the gates?

"A That's right.

"Q From May 14 of 1974 until April 13, 1975 have you ever been aware of any other accidents involving the B 7 escalator? Forget the word accidents. Been aware of any injury to anyone on the escalators?

"A No, not to my knowledge.

"Q How about the other --

MR. McMAHON: Excuse me. The next question is objected to.

(At the side bar)

(Discussion off the record)

(In open court)

MR. COUSINS: Your Honor, I will withdraw this offer of proof through this witness and reserve it for another witness.

Page 19.

"Q Does the Penn Central to your knowledge maintain accident records when someone --

"MR. McMAHON: Objection.

"MR. COUSINS: It is highly relevant, your Honor.

"MR. McMAHON: I will withdraw the objection.

"Q Did the Penn Central to your knowledge maintain accident records when someone is injured on an escalator?

"A The police department does. I know the station master receives a copy. Whether he maintains them or what he does, I don't know, I have no access to his records.

"Q But, the Penn Central Police Department does maintain copies of all accident reports?

"A Yes.

"Q Did you investigate a claimed accident involving a lady by the name of Elizabeth Monroe on April 13, 1975?

"A I did.

"Q Did you go to the scene of the accident when you learned about it?

"A I did, yes.

"Q Did you conduct any investigation at the scene?

"A My first concern was getting her medical treatment.

"Q I am not taking things in order. Just general questions. Did you conduct an investigation?

"A I asked her what happened.

"Q At the scene of the accident did you have a typewriter there?

"A No.

"Q Do you make notes of what you learn from speaking with people at the scene of the accident?

"A Usually on the back of a piece of paper in my hat.

"Q Don't you have a memo book?

"A At the time I didn't have one.

"Q Do you customarily carry a memo book?

"A I do now, but at the time I didn't have one.

"Q Is that a practice you have just started?

"A No. They had them, but I ran out of them

"Q Do you know whether Lieutenant Rockefeller had his memo book with him?

"A No.

"Q Do you know if Sergeant Kenwood had his memo book?

"A I really don't know.

"Q Did you see a Sergeant Kenwood there at the scene of the accident?

"A Yes.

"Q And, did you see Lieutenant Rockefeller there?

"A Yes.

"Q Specifically what notes did you make of the things that were told to you at the scene of the accident?

"A I usually carry a form of which you have a copy, which is typewritten.

"Q Do you have one with you that you write in?

"A I usually carry one with me so I get all the information down correctly and then it is typed up.

"Q Do you have such a form with you?

"A Yes.

"Q Where is it?

"A I don't keep it for my records once it is typed up.

"Q In other words, you don't have your written notes any longer?

"A No.

"Q Were they turned in to the police department?

"A That's the only thing the police department, I am referring to that typed document, that we had.

"Q Did you ever show any attorney a copy of your original notes made at the scene?

"A No.

"Q As of now they are destroyed or discarded?

"A That's correct.

"Q Other than the notes you made on a form which

is identical to Exhibit A, did you make notes anyplace else?

"A No.

"Q Do you know of anyone else, the police officers or someone employed by Penn Central, who made any notes at the scene of the accident?

"A Not that I can recall.

"Q Did you attempt at the scene of the accident to determine the cause of the accident?

"A I did. I asked her what happened.

"Q By "her," meaning Mrs. Monroe?

"A Yes.

"Q Did you learn from her that her foot had become caught in the escalator?

"A Yes.

"Q Were you able to corroborate that from speaking to anyone else, either police officers or anybody else at the scene?

"A No. When I saw her she was at the top of the escalator with the usher.

"Q When you got there her foot was no longer caught in the escalator?

"A That's right.

"Q Did you make any investigation as to how her foot came to be caught in the escalator?

"A I asked her and she said she was descending on the escalator and her foot was caught.

"Q Did she tell you how or why?

"A No.

"Q From your investigation did you learn how or why her foot became caught?

"A No.

"Q From the time you were assigned to Penn Station, May 14 of 1974, have you ever investigated or learned of an accident where someone's foot got caught on an escalator?

"A No.

"Q [illegible] you at the scene meet with anyone from Allied Maintenance?

"A I did, with Mr. Drossman.(phonetic)

"Q That's Allied Maintenance?

"A Yes.

"Q Are they the company with which Penn Central has a contract for maintenance?

"A They are the people who, as far as I know, Penn Central has a contract with to keep the station clean. I don't think it is a maintenance contract.

"MR. McMAHON: No, it isn't, it is only a cleaning contract.

"Q Do you know who does maintain the escalator for Penn Central?

"A I believe Penn Central has its own maintenance department for the escalators.

"Q Mr. Sova, to your knowledge, does Penn Central maintain its own escalators?

"A As far as I know, yes.

"Q Do they have a maintenance department that does that?

"A Yes, I believe it is a managing of buildings and structures.

"Q Did you take a signed statement from Mrs. Monroe?

"A A signed statement?

"Q Yes. Did you have her sign anything?

"A No.

"Q To your knowledge have you ever seen a signed statement from her?

"A Not to my knowledge, no.

"Q Other than what is typed on Exhibit A appended to Penn Central's answers to the interrogatories, did you make any other record of anything Mrs. Monroe said aside from your handwritten notes?

"A No. Just that.

"Q Did you call in anyone from the escalator maintenance department of Penn Central?

"A To my knowledge there is no man on duty on the escalators, people who work on them, on a Sunday, that I know of.

"Q Did you subsequently call in, then or anytime?

"A No. We make up the report and our investigators take over from there.

"Q Did you call in any investigators?

"A I just turned in the report. When I turned in the report, then its up to them.

"Q As you sit here now, "October 9, 1975," have you learned of any investigation done by this accident by Penn Central concerning the cause?

"A None that I know of offhand, no.

"Q Do you know the name of the usher who was actually physically at the B 7 escalator at or about the time the accident occurred?

"A No, I don't.

"Q At the scene of the accident, after the accident, did you inspect the B 7 escalator?

"A I did.

"Q Will you tell us specifically and as detailed as you can what your inspection and investigation consisted

of?

"A I looked to see if there was any debris or any tripping or falling hazards on the escalator, and there were none. I checked to see if the area was well-lighted so she could see where she was going, and it was. There were no burned-out bulbs. I looked to see if there were any loose pieces of metal on the escalator. There were not.

"Q Did Mrs. Monroe tell you she tripped?

"A She told me she got her foot caught in the escalator.

"Q But she never said she tripped?

"A No.

"Q Did she mention anybody pushing her?

"A No.

"Q Were you present when any mechanical tests or inspections were made on the escalator?

"A No, not mechanically. I rode the escalator up and down myself and found nothing wrong with it.

"Q When you first got on the escalator, was it in operation?

"A Yes.

"Q It was already descending?

"A Correct.

"Q Were you on it while the direction was changed?

"A No.

"Q You just rode it down?

"A I rode it down and when it was reversed I came back up on it.

"Q When it was reversed were you down at the bottom?

"A When they stopped it and reversed it, yes.

"Q Was it reversed from the top or the bottom?

"A It was reversed from the top.

"Q From the time you got to the bottom until you got back on it to get back up, how long did the whole process take?

"A It takes approximately a half a minute to a minute.

"Q Is the key which changes the direction of the escalator left in the keyhole at all times?

"A No.

"Q Is that key kept on the person of the usher?

"A That's correct.

"Q Is that a key which looks very much like a key to a door or probably bigger?

"A Yes.

"Q Does it look like a regular-type key?

"A Yes.

"Q Can you describe for us the positions on the key control itself?

"A You have the stop-button and approximately two-to-three inches below that there is the keyhole. If you turn it to the left I believe you cause it to ascend. If you turn it to the right, you cause it to descend, I believe. The key normally is in an upright position even after turning it.

"Q Is it spring-loaded?

"A Yes.

"Q Does the key have to be in the center position to change the direction?

"A Yes.

"Q Have you, yourself, ever operated oneof these keys?

"A Yes.

"Q Can the key be removed if it is in the ascending position?

"A No.

"Q Can the key be removed if it is in the descending position?

"A No.

"Q In other words, to remove it it should be in

a centered position?

"A That's right.

"Q Was Mrs. Monroe a passenger or about to become a passenger on a Penn Central train?

"A That's correct. An Amtrak train.

"Q Did you see any ticket?

"A No.

"Q But she was descending to the train that was going to Washington?

"A Right.

"MR. McMAHON: Descending to the platform where the train was that was going to Washington?

"MR. COUSINS: Correct.

"Q To your knowledge, during the entire time you were stationed at Penn Central, had that B 7 escalator ever been completly shut down for overhaul?

"A I wouldn't know. I don't know.

"Q Do you ever recall seeing it out of service?

"A No, I don't remember.

"Q You have no recollection.

"A I don't recall at all.

"Q Did you ever hear Mrs. Monroe speak to anyone else regarding the accident aside from yourself?

"A The usher was there and myself.

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"Q Can you physically describe the usher?

"A He was male, black.

"Q Any badge number or identifying thing on him?

"A No.

"Q Was he wearing a uniform?

"A Yes, an usher's uniform.

"Q Which is what?

"A A complete blue suit.

"Q Did he have a hat?

"A Yes, they have a hat with the word "Usher" on it.

"Q Is it like a conductor's uniform?

"A Yes. As a matter of fact, it is a conductor's uniform.

"Q Did you overhear Mrs. Monroe saying anything to anybody besides yourself as to how the accident happened?

"A Just that her foot got caught in the escalator.

"Q Did you actually go back and examine the specific spot or steps where her foot got caught?

"A It would be impossible to determine which step it was.

"Q Did you overhear her give any reasons to anyone as to why her foot got caught?

"A No.

"Q In the course of your investigations did you attempt to learn the identity of any witnesses?

"A No, because the train had already left by the time I got there, so the people who were there had already gone.

"Q Do you happen to know how the people who were behind Mrs. Monroe got to the 13-14 Platform?

"A No, I don't.

"Q When you first arrived at the scene, was the B 7 escalator moving or standing still?

"A It was moving.

"MR. McMahon: Was it moving up or down?

"THE WITNESS: It was moving down.

"Q Do you know which police officers first arrived at the scene?

"A Myself and a Patrolman Alonso.

"Q You arrived simultaneously?

"A Yes.

"Q Were there any police officers there before you two arrived?

"A No.

"Q In other words, Rockefeller and Kenwood, "that is Lieutenant Rockefeller and Sergeant Kenwood,"

came later?

"A Yes.

"Q Was Alonso your partner?

"A He was working at the upper level and it was coincidental that he got there.

"Q How were you first notified about the accident?

"A I was called by the usher.

"Q How is that done?

"A Verbally. I was on my way downstairs.

"Q You mean he shouted and you heard him?

"A Yes.

"Q And then you went over there?

"A Yes.

"Q When you got there, Mrs. Monroe was already up at the top?

"A Yes.

"Q Where was she physically?

"A She was in the hallway.

"Q She was in a doorway?

"A Yes, inside on the track side.

"Q Was she on the ground?

"A She was leaning on the usher and holding on to the wall steadying herself against the wall.

"Q When you observed her, did you observe any

injury to her?

"A I observed her right ankle.

"Q What did you observe about her?

"A It was bleeding and it appeared to be swollen.

"Q Was there any obtruse distortion or break in it that you could see?

"A Apparently. I couldn't say for sure.

"Q Not medically: just tell us what you observed.

"A I observed it swollen and bleeding.

"Q Was it actively bleeding when you got there?

"A Yes.

"Q Was she making any complaints of pain?

"A In the ankle.

"Q Did she make any request of you?

"A I asked her if she wanted an ambulance, and she indicated yes, and Patrolman Alonso summoned an ambulance and she was transported to the hospital.

"Q Did an ambulance finally come?

"A Yes.

"Q How long did it take to get there?

"A About fifteen or twenty minutes.

"Q During this time was she standing, leaning against the usher?

"A No. I got a wheelchair and had her sit in it.

"Q So when the ambulance arrived she was in the wheelchair?

"A Yes.

"Q Do you recall whether she had shoes on her feet?

"A As I recall, she didn't have her shoe on her right foot.

"Q Did you see that shoe for the right foot?

"A I did subsequently. Later on. It appeared to be okay.

"Q When you say "later on," where?

"A On the floor as we picked up all her belongings.

"Q Did you give the shoe back to her?

"A Yes.

"Q Did you observe any damage to the shoe itself?

"A Not that I noticed, no.

"Q Did you speak to Lieutenant Rockefeller or Sergeant Kenwood regarding any investigation they may have made?

"A No, I didn't.

"Q Whose job is it to locate any possible witnesses? Is that one of the police functions?

"A That's correct.

"Q To your knowledge, were any witnesses

identified?

"A No, not to my knowledge.

"Q Did you learn the identity of the people on the escalator who had brought her to the top?

"A No, I didn't. I don't even have the knowledge of how she got to the top. When I saw her she was up at the top.

"Q Yes, by the time you got there, was the 161 train to Washington still there?

"A No.

I am skipping from the lower half of page 36 to the top of page 37.

"Q By the time you got there, was the 161 train to Washington still there?

"A No, it was gone.

"Q Do you know how long after the accident occurred that you actually arrived at the scene?

"A I really don't know what time it occurred. I got the call approximately ten minutes to ten when I was going downstairs. It could have happened just before. They open the gate approximately fifteen minutes before the train leaves, so it could have been within five minutes or so. I really don't know.

"Q Do you know whether or not Mrs. Monroe was the

first person to go on the escalator to the train?

"A I would have no way of knowing.

"Q Is it customary for them to start boarding the train fifteen minutes before departure?

"A It is customary, yes.

"Q Did you speak to the usher or interview him at all, the usher who was operating the escalator?

"A I arrived on the scene and I said "what happened," and he said "she hurt her foot," that's all.

"Q He didn't say anything else to you at all?

"A No.

"Q Did you ask her where her foot was caught on the escalator?

"A No.

"Q And sitting here now you don't know where it was caught or how it was caught?

"A No, I don't.

"Q Did you take any statements from the usher?

"A No.

"Q Do you know if the station master's office customarily takes a statement from the usher of an escalator involved in an injury?

"A I don't know.

"Q From prior experience do you know?

"A I don't know.

"Q Did Mrs. Monroe actually tell you she fell?

"A She just stated that she got her foot caught in the escalator. She didn't say anything about falling.

"Q Was she wheeled out to the street where the ambulance was?

"A She was wheeled through the building and up another escalator to the "ticket" concourse.

"Q Were you actually able to put the wheelchair on the escalator?

"A Yes. They have the "carry chair," the ambulance has the "carry chair."

"Q Is it a fair statement that you saw nothing whatsoever which would cause Mrs. Monroe's foot to get caught in the escalator?

"A That's right.

Then Mr. McMahon asked a few questions after I was concluded, specifically on line 20.

"Q Did she tell you what caused her to fall?

"A No, she didn't. She stated her foot got caught. That's all.

"Q And that caused her to fall?

"MR. COUSINS:That was his testimony, that she didn't tell him she fell. Was that true? Was that your

testimony?

"THE WITNESS: Yes.

At this point Mr. McMahon asked something be marked for identification, which I would like to do at this time, with the Court's permission.

Skipping ahead for this purpose to page 41.

"Q This accident report, is this a report prepared by you in the regular and ordinary course of business?

"A That's correct.

MR. McMAHON: I have no objection if he wishes to offer it in evidence.

MR. COUSINS: That saves a lot of time. Your Honor, I do offer this in evidence, Plaintiff's Fxhibit 1.

(Plaintiff's Exhibit 1 received in evidence.)

Page 41, line 14.

Q "Q "This accident report," which has now been marked Plaintiff's Exhibit 1 in evidence, "is this a report prepared by you in the regular and ordinary course of business?"

"A That's correct.

"Q Is this prepared for Penn Central Railroad?

"A You mean the report itself?

"Q Yes.

"A Yes.

"Q Was this report prepared at the request of any attorneys for this case?

"A No.

"Q Is that your signature?

"A Yes.

With the Court's permission, I would like to read from this to the jury.

MR. McMAHON: Excuse me, your Honor. For continuity, could I read a brief portion that Mr. Cousins left out now?

MR. COUSINS: I have no objection.

MR. McMAHON: Page 40, line 9. I am doing the examining here, sir.

Q "Q Patrolman Sova, I want to show you Defendant's Exhibit A for identification. Is this a copy of your report to the railroad?

That we agree is the Plaintiff's Exhibit 1 now in evidence.

"A That's right.

"Q Would you look at it, please, sir? This refers to Elizabeth Monroe; does it not?

"A That's correct.

"Q Did Mrs. Monroe tell you what caused her to fall on the escalator?

"A She said her foot got caught on the steps.

"Q And what?

"A Causing her to fall.

MR. COUSINS: Your Honor, at this time I would like to read from Plaintiff's Exhibit 1 in evidence, the Penn Central Police Department Accident Report, prepared and signed by Richard E. Sova, the witness whose deposition I have just read, and countersigned -- no, I think that means cc, carbon copy, it just means that a person got a copy of it.

MR. McMAHON: Sent to assistant station master.

MR. COUSINS: The date of this report is April 13, 1975, which is the date of the accident. It says at the top "Penn Central Police Department, Accident Report." The name is Mrs. Elizabeth Monroe, age 75, sex female, race white, d.o.b. is of course date of birth, 5/17/00, which obviously means 1900. Address is 219-12 --

MR. McMAHON: In all fairness, that is not the correct date of birth of Mr. Sova.

MR. COUSINS: It is the plaintiff.

MR. McMAHON: I am sorry.

MR. COUSINS: If he is 29, he wasn't born in

1900. The address of the plaintiff is 219-12, 43rd Avenue, Bayside, Long Island, New York.

In the description of the accident put down by Mr. Sova, he puts down,"time of accident; 9:50 A.M. Penn Station, New York, Track 13, Train 161. Date: 4/13/75. Escalator from upper level -- this is the location: Escalator from upper level to train level, escalator B 7. Injuries suffered: Appears to be a broken right ankle and cut on right ankle.

Details of accident: Mrs. Monroe stated she was going down the escalator when her foot got caught in the steps causing her to fall. The right ankle appears to be the only injury, as when asked she stated only her ankle hurts. She was removed by ambulance Number 160 from Polyclinic, Attendant Daniels, to French Hospital at 10:05 A.M.

Mrs. Monroe was on her way to Washington, D.C. on Train 161. Area examined by this officer and found to be clear and well-lighted, escalator appears to be in proper working order. Mrs. Monroe requested her daughter, Miss Mary Elizabeth Monroe, be notified of accident. This was done at 10:10 this date. Sergeant Kenwood, Number 207 -- that means shield or badge number -- and Lieutenant Rockefeller, number 60, on scene. Witnesses' names and

addresses typed in neatly, none. Mr. Drossman checked after and found it to be clear of debris. Signed by Richard E. Sova, Shield Number 821, patrolman. There is also something written, not typed, but written, on the reverse side of this which I would like to read to the jury. Before doing so I would like to read from a portion of the defendants' answers to interrogatories which have been served in this case, specifically interrogatory number eight:

"Was an accident report in any form and by whatever name called prepared by any of the defendants, agents, servants and/or police? If so, please attach a true copy thereof. If none was prepared, state so specifically.

Answer: Police report attached and marked Exhibit A.

This was verified by the Penn Central, your Honor. This was the report, all typed. Nothing on the back. At the deposition we found something on the back which I would like to read to you, written in:

"After checking train on 9 and 10, saw a u.n.k."--

MR. McMAHON: I don't have that.

MR. COUSINS: --"After checking train at 9 and 10, saw a u.n.k., abbreviation for unknown, usher supporting Mrs. Monroe against wall on Track 13 entranceway. Ptl. -- which I think is the abbreviation for patrolman --

summoned ambulance and chair to enable her to sit down while awaiting ambulance. Dortman at 10:20 .M., no maintenance available."

Your Honor, at this time I'd like to read to the members of the jury some of the other answers filed by the defendants in this lawsuit.

Interrogatory Number One: "Set forth the names and addresses of all witnesses to the accident which is the subject matter of this litigation. If none are known to the defendants or their agents, servants and/or employees, please state so specifically.

Answer: None.

Interrogatory Two: "State the name of the owner of the escalator involved in the accident which is the subject matter of this litigation.

Answer: Pennsylvania Tunnel & Terminal Corporation.

Three: Who owns the building in which the aforesaid escalator is located?

Answer: Pennsylvania Tunnel & Terminal Corporation.

Four: What is the name and job title of the person in charge of the escalator on which plaintiff was injured on the date of the accident?

Answer: Louis Mandia, Supervisor of Structure, Penn Station, New York, New York.

Five: What is the name and job title of the person who operated the escalator involved in plaintiff's accident on the date of the accident?

Answer: E. C. Tetterman, Station Master, Penn Station, New York, New York.

MR. McMAHON: Your Honor, Mr. Tetterman was the station master. I didn't know at the time the name of the usher. I found out the name of the usher and disclosed that to Mr. Cousins. The usher was produced for deposition. Tetterman was in overall charge of the station. He doesn't operate the escalator.

MR. COUSINS: Six: Can the escalator involved in plaintiff's accident both ascend and descend?

Answer: Yes.

b.) Describe how the direction of the escalator is changed?

Answer: With key-operated switch.

c.) Where are the escalator controls involved in this accident located?

Answer: Top and bottom of escalator.

Mr. McMahon, to speed things up, can you identify "C.T.75?"

MR.McMAHON: That's the report that goes to the Interstate Commerce Commission.

MR. COUSINS: Interrogatory eleven: "When prior to the date of the accident, which is the subject matter of this litigation, was the escalator involved in this accident last serviced?

Please set forth a true copy of the written report on that service. If no written report was made by anyone of that service, please state so specifically. If an oral report was made, please set forth the substance thereof, by whom made, to whom made, where made, and when made.

Answer Reports of Service Unit not kept.

Fifteen: Set forth the names and job titles of all of the defendants' employees, agents and servants, including employees, who spoke to or assisted the plaintiff herein or werepresent when this accident occurred?

Answer: Richard E. Sova, Shield Number 821, Penn Central Policeman; Al Kenwood, Shield Number 207, Penn Central Police Sergeant; Edward Rockefeller, Shield Number 60, Penn Central Police Lieutenant.

Your Honor, next I would be reading from another deposition of the defendant. I see it is five after one. Would you want to use this opportunity to break for

lunch?

MR. McMAHON: Judge, can I briefly read for continuity from the interrogatories and the answers?

THE COURT: Any objection?

MR. COUSINS: Not at all.

MR. McMAHON: Interrogatory Number Ten: When prior to the date of the accident which is the subject matter of this litigation was the escalator involved in this accident last inspected? Please set forth a true copy of the written report of that inspection. If no written report was made by anyone of that inspection, please set forth the substance thereof, by whom made, where made and when made.

Answer: Inspection Reports attached and marked Exhibit C and C 1.

MR. COUSINS: I offer them into evidence, your Honor.

MR. MCMAHON: No objection.

THE COURT: Why don't you collect them and we will put them in evidence after lunch.

MR. McMAHON: I have them right here.

MR. COUSINS: They're two separate dates; first, the April 12th inspection and the April 14th.

(Plaintiff's Exhibits 2 and 3 received in

evidence.)

THE COURT: Let's stop for lunch, ladies and gentlemen. Why don't we come back at 2:15, please.

(Lunch recess)

AFTERNOON SESSION

2:27 P.M.

(In open court, jury not present.)

THE COURT: We are still missing the forelady of this jury. Do you want to wait or go ahead without her?

MR. COUSINS: It is twenty-five after. She may be late. Can we wait five minutes.

THE COURT: Is that agreeable with you, Mr. McMahon? We will give her another five minutes.

THE CLERK: She just arrived, your Honor.

(Jury present.)

THE COURT: All right, Mr. Cousins.

MR. COUSINS: Ladies and gentlemen, at this time I'd like to read from another deposition which we have taken of the Penn Central Transportation Company. This was taken on November 3, 1975 at my office here in Manhattan of Lloyd E. Cadogan.

MR. McMAHON: Your Honor, I have the same objection to this as I did to the other one.

THE COURT: Okay. Same ruling.

MR. COUSINS: Beginning on Page 2, the examination was conducted by myself.

Q "Q What is your name?

"A Lloyd E. Cadogan.

"Q By whom are you presently employed?

"A Pennsylvania Railroad, Penn Central.

"Q Is that the Penn Central Transportation Company?

"A That would be it, yes.

"Q What is your present capacity with them today, sir?

"A I am employed as an usher.

"Q Were you employed in the same capacity on April 13, 1975?

"A April 13, 1975, yes.

"Q How long have you been employed as an usher by the Penn Central Railroad?

"A About five years.

"Q Will you tell us what your duties as usher encompassed both then and now?

"A The status of an usher is taking care of the passengers and loading trains and giving out information. That's about what it is. It is nothing larger than that. When passengers bring you conditions, you must solve them for them. I can't say this is what happens in each particular time. My answer to you would be giving out information, loading trains, directing passengers and

answering questions for any conditions that exist with them.

"Q You used the term "loading trains." What does that involve?

"A That involves, we are assigned certain trains to load on a schedule basis. These trains, we are told beforehand that the trains are in the station and ready to be loaded. Our duty is to check the train to see if the conditions are right for loading as laid down by the railroad.

"Q Do you actually go aboard the trains and check the trains?

"A We do this, but formally we go down to the platform to see that the trains have lights in them, the crew is on the platform ready, and permission given. We tell the man we are ready to load and he says go ahead and load, and we start loading.

"Q Do you have anything to do with unloading passengers?

"A No. We load primarily.

"Q On April 13, 1975 in the morning, had you been assigned to load passengers for a train going to Washington, D.C.?

"A Right. Yes. Train 161.

"Q What time was that train scheduled to leave Penn Station for Washington?

"A Ten o'clock.

"Q 10:00 A.M.?

"A Yes.

"Q Can you tell us what platform that train came in on or what track it came in on?

"A The departure of that train, the platform that the train was on, was on Track 13 and Platform 7.

"Q Is there an escalator that connects from Track 13 to the concourse?

"A Which concourse do you mean, sir?

"Q Are you familiar with a Horn & Hardart near the top of an escalator that goes to Track 13?

"A Yes.

"Q Are you familiar with an escalator known as B 7?

"A Yes, sir.

"Q Can you tell me where escalator B 7 runs from and to?

"A B 7 runs from the upper concourse, which is the waiting room, from the waiting room to the platform, "train" platform.

"Q That would be Platform 7?

"A Right.

"Q So that the escalator B 7 connects Platform 7 to the upper concourse?

"A Right.

"Q At the upper concourse, right at the top of the escalator, is there a gate of any sort?

"A Yes. We have two doors that control the entrance to this escalator.

"Q Would you describe them, what they look like?

"A They are regular sliding-in-the-wall doors, the type that goes into the wall.

"Q Are they solid or glass?

"A Solid.

"Q Once they are closed you can't see the escalator from the concourse?

"A No, sir.

"Q Was one of your duties that morning in connection with boarding passengers for the Train 161 to Washington to open the gates at the top of the escalator?

"A Those doors were already open, sir.

"Q By someone else other than yourself, I take it?

"A Well, they were open. When I got to that particular area to load that train, the gates were open.

As a matter of fact, you will remember -- what was the month that we are talking about?

"Q April.

"A We keep those doors open because of air. and that sort of thing. The whole line, all the doors are open. Those doors have nothing to do with being closed at that particular time. So just going to the escalator is a matter of going to the escalator and starting it when the time is ready to load the passengers.

"Q Do you recall what day of the week April 13, 1975 was?

"A I could almost figure it has to be a Sunday. Which it was, no question about that.

Top of page 10.

"Q Incidentally, how many escalators are there at Penn Station going to the upper concourse from the various tracks and platforms?

"A There are not that many. Nine and 10, 11 and 12, and 13 and 14. There are only about three of them from the loading end.

"Q Are these all basically the same escalators?

"A Yes.

"Q As far as you know, were they all installed

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at the same time?

"A I couldn't tell you. Let's put it this way: when the station was made over, then the escalators were put in.

"Q Was that more than five years ago?

"A Sure.

"Q Do you have any idea in what five-year-period or ten-year-period the station was refurbished?

"A When Madison Square Garden was built.

"Q Were all these escalators operated the same way?

"A Yes, identically.

"MR. McMAHON: That was a third Madison Square Garden, if you please.

"MR. COUSINS: The most recent one.

"MR. McMAHON: The most recent one.

"Q Coming back,again,to B 7, can these escalators be started and stopped and reversed at the top of the escalator?

"A Could you start and stop it?

"Q Right, and reverse it.

"A At the top of the escalator?

"Q Yes.

"A Sure.

"Q Could you start it and stop it and reverse it at the bottom?

"A Yes.

"Q Let's talk about the controls at the top on the upper concourse: Where are the controls located for the B 7 escalator?

"A They are located on the escalator housing itself.

"Q As you go down the escalator from the upper concourse downward.

"A Left-hand side.

"Q They are on the left-hand side?

"A Yes.

"Q The vertical side of the escalator, is that called the "skirt?"

"A I call it the "housing," the metal part.

"Q The controls would be on the left?

"A Yes.

"Q Would they be on the aisle or on the other side of it?

"A Not in the aisle. It would be on the left-hand side of the "housing" on the bottom.

"Q Referring to the controls on the upper concourse on the left-hand side of the escalator, will you

tell us what those controls consist of and physically describe them?

"A It consists of a stop-button, one stop-button.

"Q What color is that?

"A The color varies. Let's say it is black. Then there is a key control which uses the up-and-down action, the direction in which the key is turned, it is up, and the direction in which the key is turned, it is down.

"Q I see you are indicating clockwise and counterclockwise. Does clockwise make it go down?

"A From the position I am sitting now, if I stick it in like this, I believe the steps would come up.

"Q Counterclockwise is up, clockwise is down?

"A Right.

"Q Is it necessary to press the button to turn the key?

"A No. I always do it. I don't know why. You put the key in and you twist it to your right and the stairs will start to descend.

"Q How long does it take from the time you turn the key and it starts moving until it attains the normal speed?

"A It doesn't change speed. It is a matter of

turning the steps all the way down.

"Q Then it takes a period of time for it to get to its normal speed?

"A No. It is a very low-powered situation.

"Q The second you turn your key it is a normal operating speed.

"A That's it. If that ever happened, a change in speed, you will kill a million people a year.

"Q Do Penn Central regulations or operating practices permit you to start an escalator from a stopped position with people on it?

"A No.

"Q Would that be against --

"A All regulations.

"Q -- all regulations?

"A Yes.

"Q Incidentally, has Penn Central ever given you a book or any sheets of information with the operating regulations or practices for ushers?

"A Yes, we have these, we were trained, I came from another department into that department, and we were given training how to operate these escalators.

"Q Were you ever given any booklet or books or anything?

"A They have a manuel that tells you all about the elevators, escalators and everything.

"Q What is the name of that manuel?

"A At this moment I don't remember. It is our safety manual."

Your Honor, that was provided by Counsel and at this time I respectfully offer that into evidence. Penn Central Safety Rules, effective July 1, 1968.

MR. McMAHON: No objection.

(Plaintiff's Exhibit 4 was received in evidence.)

Q "Q They still use that manual today for when a new person comes on the job, would they not?

"A I imagine so.

Page 15, line 5.

"Q You and all ushers were taught never to start or reverse an escalator with anybody on it; is that correct?

"A Sure.

"Q Can you tell us, sir, if you know, why it is not good practice to reverse an escalator with someone on it?"

There was no answer. I then went into another question.

"Q You have indicated that you should never reverse an escalator with people on it. What I am asking you is why?

"A Because you could injure quite a lot of people that way. If an escalator is going down and you stop it, if it is going down and you suddenly stop, it is going to throw you, like your car when you put your foot on the brake in an emergency fashion, you know, you go forward. If you stop an escalator with people unaware of that fact, the same thing will happen as if you put your brake on your car.

"Q Does the escalator have gears to reverse it and put it forward and back?

"A The mechanical operation of that I am not too familiar with. It should be a gear-driven thing.

"Q Is it your statement that you have no knowledge of the mechanics of it?

"A Not at all.

"Q You never been trained as in the maintenance of it?

"A No. We just operate it.

"Q I think that we have established that when we turn the key clockwise to start it, it immediately goes to its regular speed.

"A It immediately moves. Whatever the speed is, for an escalator of that type to move, it assumes that speed.

"Q Assuming the escalator is descending and you push the stop-button, how long does it take the escalator to come to a complete stop?

"A Immediately. Instantaneously.

"Q Correct me if I am wrong: It would be dangerous to start an escalator from a stopped position with people on it?

"A Right.

"Q It would be dangerous to stop an escalator with people on it?

There was an objection. I rephrased the question.

"Q Would it be dangerous to reverse the direction of an escalator with people on it under normal conditions?

"A Yes.

Page 20, line 19.

"Q Whose responsibility is it to make sure that there are no passengers on the escalator prior to reversing the direction of the escalator?

"A My responsibility.

"Q That would be the responsibility of the usher

who was operating the escalator?

"A Yes.

Page 21, line 16.

"Q Have you now described all the controls connected with the operation of the escalator at the top on the upper concourse?

"A Yes.

MR. MCMAHON: Where is this again?

MR. COUSINS: Line 16, page 21.

"Q Do you have any control whatsoever over the speed of the escalator?

"A No. There is no such thing.

"Q Now that we have described the controls for the record from the floor at the bottom of the skirt or housing to the top where I assume you have that handrail you hold on to, the moving rail --

"A That the people hold on to to go down.

"Q --how high is that from the floor to the top of the housing?

"A I figure maybe about three feet.

"Q Where are these controls, the key and the button, in relation to the floor?

"A In the center of that three-foot-area that we just mentioned.

lhtg

"Q Approximately a foot-and-a-half below the top?

"A Yes.

MR. McMAHON: Are these on the outside of the aisle?

THE WITNESS: Yes.

"Q Is that correct?

"Q Well, remember now, the aisle that we are talking about, when you walk through the gate, you walk through the gate to the escalator which is a distance of about six feet, maybe a little less, and then the escalator starts.

You don't just walk off the concourse onto the escalator.

Bottom of page 23.

"Q Is there any safety device on this escalator, sir, which prevents the escalator from being reversed while people are on it?

"A I wouldn't know.

"Q You don't know of any?

"Q No.

Page 25, in the center.

"Q Can you, if you want to, intentionally press the stop-button and turn the key and reverse the escalator?

I will have to go back. Line 6.

"Q Can you, if you want to, with the key in the button reverse the direction of the escalator while people are on it?

"A No.

"Q We are trying to understand the mechanics, not a state of mind. Can you, if you want to, intentionally press the stop-button and turn the key and reverse the escalator?

"A Sure, that can be done, yes.

"Q Can you if you want to, when I say "want to," I am talking about mechanically, stop the escalator from descending with people on it?

"A Yes.

Page 26, line 19.

"Q Now, sir, does one key work all the different escalators or is there a different key for each escalator?

"A One key.

"Q Does one key work the bottom and top of all the escalators?

"A Yes.

"Q Can you tell us where the controls are located at the bottom of the escalator?

"A The same position as on the top, in the center,

on the same side.

"Q At the top as you face down the escalator, it would be on your left?

"A Yes. Coming back it would be on your right.

"Q When did you first arrive at the escalator on the morning of April 13?

"A We have a loading time fifteen minutes before departure time.

MR. McMAHON: Excuse me. Would you indicate when you are skipping?

MR. COUSINS: Yes, page twenty-seven, line 25.

"Q When did you first arrive at the escalator on the morning of April 13?

"A We have a loading time, fifteen minutes before departure time. Say about 9:44, a minute before I start to set up my train.

"Q What did you do when you first got there that morning?

"A That morning --

"Q The morning of April 13.

"A Well, when I got to the gate I looked downstairs and I saw the trainman down there. I asked him, "Are you ready to load?" He said send them down.

I pushed the key into the escalator. The escalator was coming up --

"Q When you first got there that morning the escalator was ascending?

"A Right. All escalators are ascending.

"Q Always or that morning?

"A The escalators are always operating. They only go down when we are loading. But when we are not loading they are coming up because the passengers have to use it.

"Q On an off hour like a Sunday or holiday when there is no train going out or coming in, isn't it customary practice to shut the escalator off?

"A No. That escalators could run continuously because we have passengers also coming in to use the escalator to get to the train platform at the top.

"Q So you arrived there at the top, the escalator was ascending. and you looked down or shouted down, was that the trainman?

"A Yes. One of the crew members for the train.

"Q He said send them down?

"A Yes.

"Q Will you then describe what you did mechanically?

"A I put the light on, a "bungalow" light, to

indicate to the announcer that this train is now going to be loaded.

"Q This is the signal to someone in the announcement booth?

"A Right. I put up the sign which indicates where the train is going. Then I go and I stop the escalator, put the key in, turn it and it starts descending, and by that time the announcer is already directing the passengers towards the area for those going on that train, then know this is the track, and they start going down.

"Q When you reversed the escalator from ascending for the 161 train to Washington, were there any people already at the gate, near the top of the escalator?

"A They were standing outside of the entrance to the train gate.

"Q Just outside the gate, in other words?

"A Right.

"Q Did you remove your key from the escalator before any passengers got on the escalator?

"A Yes.

"Q How long before the first passenger got on the escalator, sir, had you removed your key from the

control?

"A I can't tell you that.

"Q Approximately?

"A I wouldn't even know. I don't even look at people. It is a funny thing. I am bending down, sir, I take the key out, and I step back and let the people pass me. They are always in a hurry. I get out of the way. I don't know if twenty people passed me, whether they are black, blue or gray. That is a fact. It is hard to believe, but that is the fact.

"Q Are you positive that your key was completely removed from the keyhole before anybody got on the escalator?

"A Sure.

"Q How much time had elapsed? You can't tell me?

"A No.

"Q Can you tell me if the first person onto the escalator was a male or female?

"A No, I don't remember.

"Q Can you remember anything whatsoever about the first person who got on the escalator?

"A No.

"Q When you accomplished reversing the escalator

and had it going down, did anybody push you to get out of the way?

"A No.

"Q Nobody pushed you, or anything?

"A No. It becomes automatic. Even if there is nobody getting on the train, even if it is an off-Jersey coast situation you are accustomed to, here they come, the thundering herd, and you get your key out and move aside.

Middle of page 33.

"Q Did you watch the escalator for any period of time or did people get on it right away?

"A No. When I turned the escalator key on and she starts down, "she" meaning the escalator, I walk outside and the passengers go right on.

"Q My question is: did you observe the escalator descending for any period of time before passengers boarded the escalator?

MR. McMAHON: Where is this?

MR. COUSINS: Page 33, the very next question.

"A When I put the key in I have to make sure that the steps are moving.

"Q Again, did you watch these steps descend for

any period of time?

"A I have to.

"Q Approximately how long did you watch them?

"A Just three or four steps moving.

"Q What did that take, about a second?

"A About half a second.

Line 17.

"Q During the five years you have been an usher at the Penn Central, what malfunctions have you observed of an escalator such as the ones involved in this accident?

"A The railing, when you started the escalator sometimes, one arm, one railing moves and the other one didn't move, and the escalator starts clicking and we take it out of service. That's about the only malfunction I noticed about those escalators.

"Q Have you ever observed that particular phenomenon, one rail moving and one rail not moving, on the B 7 escalator?

"A Not to my knowledge. I had never seen it on the B 7 escalator. Not that it never happened, but I don't remember it.

Page 35, line 16.

"Q Have you ever observed any other malfunctions

or irregularities in the escalator? Have you ever observed an escalator jerking?

"A Yes, because of the arm, but that's the only way it does it.

Page 36, line 9.

"Q Have you ever observed one of these escalators jerky in its operation?

"A Other than when I tell you the arm is out of sequence with the other one, other than that, no.

"Q When you observed one of the arms getting out of sequence, are there any instructions or anything you are suppoed to do?

"A Yes. It becomes very noisy. You turn it off and you report it.

Page 36, line 5.

"Q The railings we are talking about, people are supposed to hold on to them, are they not?

"A Yes.

"Q The railing is supposed to move with the steps, is it not?

"Q Yes.

"Q If a person is holding on to the railing and one of the railing stops moving, their feet are going to keep going and the arm goes back?

"A No. The steps continue on, the steps are more powerful than the railing.

Page 38, line 7.

"Q Are both railings supposed to move together?

"A Yes.

"Q If you become aware that they do not move together, are you supposed to shut the escalator down?

"A When they are not moving together, I wouldn't notice that. But if there is a noise along with this malfunction, then we turn the escalator off.

"Q Were you present at the B 7 escalator when Mrs. Elizabeth Monroe was injured?

"A Yes, I was.

"Q How long after you started the escalator descending did her injury occur?

"A Well, let me see. I'd say maybe a few minutes. When I started the escalator and the passengers started down, I had just gotten in front of the gate, out of the escalator area, to the outside of the gate. Then I started watching the passengers go through, just about that time, say maybe a couple of minutes.

Your Honor, with Mr. McMahon's permission, I have read up to this point to establish some basis for expert testimony. With the Court's permission I

would like to cease the reading at this time, and because the experts are here, put them on the stand.

THE COURT: Any objection?

MR. McMAHON: Can I read three questions before he does that?

THE COURT: Sure.

MR. COUSINS: No objection.

MR. McMAHON: Page 33, line 5.

"Q Did you check it all or observe it for any period of time?

"A When I put the key in and started down for boarding, there was nothing wrong with it and it was operating as cool as ever. It is a funny thing but escalators, when they are running bad, you can hear it.

Page 39, line 2.

"Q How did you first become aware that Mrs. Monroe had been involved in an accident?

"A I heard people hollering.

MR. COUSINS: Your Honor, I will object at this point because I haven't finished reading. He is now going past the point where I read.

MR. McMAHON: You read down here, page 39.

MR. COUSINS: That's because I haven't finished.

MR. McMAHON: No, you read down here.

MR. COUSINS: Read anything on that page.

MR. McMAHON: How did you first become aware that Mrs. Monroe had been involved in an accident?

"A I heard people start hollering.

"Q This was coming from the escalator itself?

"A Yes.

"Q Do you happen to know whether or not Mrs. Monroe was the first person on the escalator?

"A No. She wouldn't have been the first person. I am speaking of when I got to her. There were people ahead of her when I got to her.

"Q Were people rendering assistance to her when you got there?

"A When I got there I had to stop the escalator. She was on the escalator. There were a couple of people. When she collapsed on the escalator, the people naturally would back up.

MR. COUSINS: With the Court's permission, I at this time call Mr. Gilliard to the stand, sir, of Otis Elevator Company.

W A R R E N G I L L I A R D, called as a witness by the plaintiff, having first been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. COUSINS:

Q Mr. Gilliard, by whom are you presently employed, dir?

A Otis Elevator Company.

Q In what capacity is that?

A Service Sales Representative.

Q For how many years have you been employed by Otis?

A Approximately twelve years.

Q Has that been basically in that same capacity, sir?

A Yes, basically.

Q Before assuming your duties as an account representative with Otis, were you put through any contract course by the company?

A Yes, a formal six-month training course encompassing securing, trafficking and estimating.

Q On April 2, 1976, that's earlier this year, did you receive or did your company receive a subpoena for your deposition to be taken as a witness?

A Yes, we did.

Q Was that served upon you by the Penn Central Railroad Company?

MR. McMAHON: How does he know?

MR. COUSINS: He testified to it under oath at his deposition. He obviously knows.

Q Do you know who served that subpoena?

A No, I do not.

Q Pursuant to a subpoena did you testify at a deposition?

A Yes, I did.

Q In connection with the trial here today, not the deposition, has Otis received a second subpoena?

A Yes, they have.

Q In fact, have you received one?

A Yes, I have.

Q Do you know who that was from?

That was registered as being for the plaintiff.

Q Not the Penn Central but Mrs. Monroe?

A That's correct.

Q Have you received any subpoena to your knowledge from the Penn Central to testify here at the trial?

A Not to my knowledge.

MR. McMAHON: I'd like to state for the record that Mr. Cousins told me on Thursday that he was going to subpoena the Otis Elevator people.

Q Before taking the stand here, did you meet

with me previously for twenty minutes over the lunch hour?

A Yes, I did.

Q Was that right here at the courtroom?

A Yes, it was.

Q Was someone else present from Otis during that conversation?

A Yes, they were.

Q Who was that, sir?

A Jack Scherzer.

Q Who is he?

A He is an Otis repair superintendent.

Q Have you ever testified or done any work for me in any case?

A No, I have not.

Q To your knowledge, have you ever testified or done any work for the law firm of Fuchsberg & Fuchsberg who represents Mrs. Monroe in this case?

A Not to my knowledge.

Q At the deposition or prior to the deposition which was April of this year, were youasked by the defendant to bring any records to that deposition concerning the escalator involved in this case?

A Yes, I was.

Q Were you also asked at the deposition for an

Otis maintenance checklist?

A Yes, I was.

Q Okay, I will bring them up and have you identify them.

MR. COUSINS: I am going to offer into evidence everything Mr. Gilliard prodcued at the deposition, Mr. McMahon.

Do you have any objection?

MR. McMAHON: I don't know the relevancy, first of all.

MR. COUSINS: Then I will mark it for identification.

(Plaintiff's Fxhbit 5 was marked for identification)

Q Mr. Gilliard, would you be kind enough to identify Plaintiff's Exhibit 5 which has been marked for identification for us, sir?

Would you describe what that is.

A This is an Otis maintenance check chart used by our maintenance mechanics for contractorial maintenance service.

Q As an account representative, are you personally familiar with the various serivces Otis provides customers in connection with the sale and

and maintenance of its escalators?

A In general, yes.

Q Can a customer, if they desire, after they purchase an Otis escalator, purchase a maintenance contract with Otis'

A Yes, the can.

Q Would you tell the members of the jury, please, what that consists of, what a maintenance contract with Otis is and what benefits it provides.

A A maintenance contract is for the regular examination, lubrication and repairs of the vertical transportation equipment that they have under contract.

Q Is one of the purposes of the maintenance --

MR. McMAHON: Objection to the form of the question. He is leading the witness.

MR. COUSINS: He is an expert witness.

THE COURT: Don't lead.

Q Does Otis provide, print and prepare manuels and checklists for use by its own personnel who are maintaining these escalators pursuant to those contracts?

A Yes, they do.

MR. McMAHON: Please, your Honor, I object to leading the witness.

THE COURT: All right. You will watch that,

Mr. Cousins. Go ahead.

Q Can you describe for us or tell us if Plaintiff's Exhibit 5 is a checklist used by Otis in the maintenance of an escalator pursuant to such a contract?

A Yes, it is.

Q Would that checklist encompass and include the type of escalator involved in this case, which I think you told us was a 32-RB escalator?

A That's correct.

Q Would this check list be applicable to this escalator?

A That's correct.

MR. COUSINS: Your Honor, I respectfully offer this into evidence at this time.

MR. McMAHON: May I have one or two questions?

VOIR DIRE EXAMINATION

BY MR. McMAHON:

Q Mr. Gilliard, isn't it true, sir, that you don't provide this to the railroad? You don't give this to the railroad, is that right?

A You are going to have toclarify the question.

Q You don't give Plaintiff's Exhibit 5 for identification to the railroad?

A You are saying "don't?"

Q You do not? You have not provided?

A That's correct.

Q As a matter of fact, you know that the trustees of the Penn Central Railroad do their own maintenance?

A That's correct.

Q So this Otis maintenance or Exhibit 5 I.D., for identification, has nothing to do with the Penn Central Transportation Company, does it, sir? You never gave it to the railroad?

A That's correct.

MR. McMAHON: I object to it.

THE COURT: Mr. Cousins, what do you say in why is it reelvant?

MR. COUSINS: One more question.

DIRECT EXAMINATION CONTINUED

BY MR. COUSINS:

Q Can you tell us Otis' place in the country in terms of its size and the number of escalators it has in operation throughout the country?

A Throughout the country, Otis Elevator has approximately 200,000 units on maintenance and it controls approximately 50% of the vertical transportation market.

Q Is it a fair statement -- I didn't hear that

last part. It controls approximately 50%?

A Of the vertical transportation market.

Q Would it be a fair statement that Otis Elevator is the single largest manufacturer of escalators and maintainers in the country?

A That's correct.

Q Is the Otis maintenance checklist, Plaintiff's Exhibit 5, does it consist of what Otis indicates or regards as good operating practice in the maintenance and checking of an escalator?

MR. McMAHON: Objection to the form, Leading, sir.

THE COURT: I will allow that.

A Would you repeat the question.

Q Does this Otis checklist contain what Otis believes to be good practice in the maintenance and monitoring of the performance and condition of an Otis escalator?

A That's correct.

Q Would that include the specific escalator involved in this case? Does the checklist encompass the specific escalator involved in this case, the 32-RB, I am talking about?

A I don't understand the question.

THE COURT: You already asked that before anyhow.

MR. COUSINS: Your Honor, as an example of custom and usage in the train for this escalator, I offer this in evidence.

THE COURT: We will receive it.

MR. McMAHON: Your Honor, may I be heard briefly, sir?

THE COURT: I thought I heard you before.

MR. McMAHON: He had some more questions after that.

VOIR DIRE EXAMINATION

BY MR. McMAHON:

Q Your company not only sells escalators, you sell the service, right?

A That's correct.

Q If a customer doesn't buy the service, you are not going to tell them how to maintain it, are you, sir?

A That's correct, sir.

Q So the railroad --

MR. McMAHON: Withdrawn. I object to this. Your Honor, if they don't tell us their secrets because they are in the business of selling, how are we to know?

THE COURT: If you are not suggesting that the effective maintenance of an escalator is a secret that you don't know, there may be a problem on that that we may have to leave for the jury, but your objection is overruled. Mark it in evidence.

(Plaintiff's Exhibit 5 for identification received in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. COUSINS:

Q Does Otis provide maintenance service contracts to purchasers of Otis escalators who desire it?

A That's correct.

Q Was that available to Penn Central Railroad in this case after they purchased the escalator from Otis?

A That's correct.

Q Are the Otis people who maintained -- I don't want to lead.

THE COURT: Try to resist.

MR. COUSINS: I try to move quickly and at the same time I don't want to lead.

Q Would you describe for us, sir, if you know, the training qualifications of the Otis personnel who maintain and repair Otis escalator pursuant to a contract such as you might administer, a service contract?

A I don't feel qualified to answer as to the extent of their training and education.

Q Are they trained in escalator maintenance, are they trained in a specific maintenance and repair of Otis escalators?

A Yes, they are.

Q That you know to your knowledge?

A That's correct.

Q To your knowledge,did Otis provide any training to any Penn Central personnel following or in connection with the purchase of the escalator which we know to be B 7 or any of the escalators at Penn Station?

A Not to my knowledge.

Q Do you know if there were any requests of Otis by Penn Central to train any of their maintenance employees or technicians--

A No.

Q --to maintain these escalators?

A I know of no such requests.

Q To your knowledge, does Otis generally train other people's personnel to maintain an Otis escalator?

A No, they do not.

Q At the deposition or shortly thereafter, you were kind enough to provide a portion of a parts

catalog?

MR. COUSINS: Perhaps we better have it marked for identification first.

(Plaintiff's Exhibit 6 was marked for identification.)

Q Mr. Gilliard, as an account service representative at Otis, are you familiar with the Otis parts catalog for the 32-RB type escalator?

A Generally, yes.

Q Did you at the request of Mr. McMahon and myself photostat and prepare for us portions of the parts catalog involved in some of the -- let me rephrase that -- which includes some of the parts of the Otis escalator which have to do with the drive train and the handrail?

A Yes, I did.

Q Is this such a brochure that you prepared personally, sir, or someone at Otis?

A Yes, it is.

Q Can a customer if they want to maintain an Otis escalator themselves purchase parts for that escalator as necessary directly from Otis?

A Yes, they can.

Q You don't have to have a contract to do that,

do you, sir?

A No, you don't.

Q Does Otis distribute the parts catalog to various purchasers of Otis escalators so that they have a basis on which to order parts?

A They may purchase them.

Q This is available or the information here is available to Penn Central or anyone else who wants to own and operate an Otis escalator?

A That's correct.

Q Is this document prepared by Otis Elevator in the regular and ordinary course of business? The original, obviously. I realize this is a photostat.

A Yes.

MR. COUSINS: I offer Plaintiff's Exhibit 6 into evidence.

MR. McMAHON: No objection.

(Plaintiff's Exhibit 6 for identification received in evidence.)

Q Does Otis keep a record of replacement parts ordered by a customer who has purchased an Otis Escalator?

A Yes, we do.

Q Are those records kept by Otis in the regular

and ordinary course of business?

A Yes, they are.

(Plaintiff's Exhibit 7 through 10, inclusive, marked for identification.)

Q Would you be kind enough to identify Plaintiff's Exhibt 7 for identification for us?

A This is an original sales abstract.

Q Is that a photstatic copy of the original?

A Yes, it is.

Q Was that produced by you at your deposition on April 13, 1976?

A Yes, it was.

Q Can you tell us, sir, what that indicates in connection with this escalator, if anything?

A This is the basic outline of the type and variety of escalators that is made from the original sale document in order to start an order to the factory for ordering of the equipment.

Q Is that called a sales abstract?

A That's correct.

Q Does that indicate the date of sale of the B 7 escalator? I think you gave it a different number, if I remember correctly.

A It indicates a contract date of 3/65. May 15,

1965.

Q Does this escalator, what we call a B 7, have a specific serial number given to it by Otis?

A Yes, it does.

Q What is that sir, would you tell us for the record?

A 197889.

Q So that all documents in Otis' files pertaining that that specific number refer to this escalator; is that correct?

A That's correct.

MR. COUSINS: Your Honor, I offer this in evidence as Plaintiff's Exhibit 7.

MR. McMAHON: Could I just ask one question? Do you know how many of these escalators they sold to the Penn Central in '65?

THE WITNESS: Approximately fifteen.

MR. McMAHON: So you don't know whether the B 7 is 197887, do you, sir?

THE WITNESS: I had previously identified it as that, yes.

MR. McMAHON: When I remind you now that there are fifteen other escalators of this particular number, B 7, you identify B 7 with that one number?

THE WITNESS: If you threw them all on the floor, no, I wouldn't be able to identify those numbers.

MR. McMAHON: I object to it.

MR. COUSINS: May I have one further question?

BY MR. COUSINS:

Q Prior to coming down to your deposition were you not specifically asked by the Penn Central attorneys or their representatives to examine your files and determine which records pertained to the B 7 escalator?

A Yes.

Q From doing that did you learn that it was this escalator number?

A Yes, I did.

MR. COUSINS: I still offer it.

MR. McMAHON: No. You learned that that was the same type escalator as the B 7, not which one of the fifteen it was, isn't that so?

THE WITNESS: No, sir.

MR. McMAHON: It was B 7?

THE WITNESS: That's correct.

THE COURT: Mark it in evidence.

(Plaintiff's Exhibit 7 for identification received in evidence.)

BY MR. COUSINS:

Q Incidentally, sir, on the sales abstract for an escalator, if the customer at that time ordered the service contract with the escalator later, would that appear on the sales abstract?

A I doubt that.

Q Would that be on a separate piece of paper?

A Yes, sir.

Q Can you identify for us, please, Plaintiff's Exhibit 8 for identification?

A This is the new installation maintenance record card.

Q Does that pertain to the B 7 escalator?

A That pertains to machine number 197889.

Q For the record, is that the number you just read off the sales invoice for this escalator, 197889?

A That's correct.

Q In fact, is that you who circled the escalator on the original documents.?

A Yes, it was.

Q The ones that are circled pertained to the escalator in this case?

A That's correct.

Q What is that form that's in your hand?

A This is a record of the three-months new

installation service that we provide with all units that we install.

Q In other words, does the escalator come with -- the sale comes with three months of service afterwards?

A That is correct.

Q I take it that doesn't require a separate service contract?

A That's correct.

Q If the customer wishes to have Otis maintain the escalator after that three-month period, do they have to then purchase a regular sales contract with Otis?

A Yes, they do.

Q Was that done in this case?

A It was not.

Q Would you also identify for us, sir, Plaintiff's Exhibit 9? While he is looking at that, your Honor, I respectfully offer this into evidence as Plaintiff's Exhibit 8.

MR. McMAHON: I have no real objection to this, Mr. Gilliard, except I'd like to know if possible, you can tell the jury, how you identify B 7 with the number here, with 197889?

THE WITNESS: By our office records.

MR. McMAHON: Have you got those?

THE WITNESS: No, I do not.

MR. McMAHON: One says alongside it B 7 and then this number after it.

THE WITNESS: That's how we have coordinated over the years, yes, sir.

MR. McMAHON: Over the years?

THE WITNESS: Yes, sir.

MR. McMAHON: Suppose you do this: go back in it and pick that record up and bring it tomorrow morning, can you do that?

THE WITNESS: Surely.

MR. McMAHON: I have no objection, then, to this.

(Plaintiff's Exhibit 8 for identification received in evidence.)

BY MR. COUSINS:

Q You have in front of you Plaintiff's Exhibit 9, sir. Could you tell us what that is, please?

A This is a smear of contract data.

Q That encompasses what? What's the purpose of that document?

A This details more specifically the materials

or components of that specific escalator, 197889.

Q Are there some slight modifications or alterations to an escalator to install it in a particular environment, such as the Penn Station as opposed to some office building, or something?

Is that what you are talking about?

A No.

Q Tell us exactly what details that encompasses?

A This details the specific rise of the escalator which relates to the quantity -- some quantities of equipment on the escalator, such as steps.

Q Is this a stock item that you so-to-speak take off a shelf or was this designed by Otis specifically for this installation in terms of the height and things like that and angle?

A This would be designed specifically for that installation.

Q That's all done by Otis; is that correct?

A That's correct.

Q Does this document, then, contain the details of that specific installation?

A The details as far as equipment, yes.

Q This contains all the equipment on it as it was new and installed; is that correct?

A That's correct.

MR. COUSINS: Your Honor, I respectfully offer this into evidence.

MR. MCMAHON: No objection.

(Plaintiff's Exhibit 9 for identification was received in evidence.)

Q Mr. Gilliard, in your hand or in front of you is Plaintiff's Exhibit 10 which is not yet in evidence but which has been marked identified. Would you be kind enough to tell us what that is, sir?

A This is an index of orders that details materials and work that we do at Penn Station or various machine numbers.

Q Does that also include numbers of the parts ordered by the owner of the escalator?

A That's correct.

Q From looking at that document can you tell us if subsequent to the sale and installation of this B 7 escalator by Otis Penn Central sometime in 1974 ordered any specific replacement parts for a portion of it?

A On the assumption that B 7 escalator is machine number 197889 --

Q On that assumption, yes sir.

A A handrail was ordered for that escalator and

the date the order was entered on to this card was January 18, 1974.

Q That was sold by Otis to the Penn Central; is that correct?

A That's correct.

Q Was it installed on the escalator by Otis?

A It was not.

Q Are Otis personnel trained, do they receive specialized training in the installation of railings or -- is that what it is called, a railing?

A Handrails.

Q On its own escalators?

A Yes, they do.

MR. COUSINS: Your Honor, I respectfully offer--

Q Again, this is a record made and maintained in the regular course --

MR. McMAHON: No objection.

(Plaintiff's Exhibit 10 for identification received in evidence.)

Q Mr. Gilliard, as an account representative, are you occasionally on the receiving end of field complaints when they have a mechanical or operational problem with an Otis escalator?

A On occasion, yes.

Q I assume that they cover a wide variety of problems, depending on who calls and where and when.

A That's correct.

Q Can you tell us, rather than having you testify to everything that you were ever told, is one of the problems you get occasionally --

MR. McMAHON: Objection. I know what's coming. That's why I object.

MR. COUSINS: Your Honor. I can't think of a way --

MR. MCMAHON: He is going to lead him. I don't think he is qualified to state, because the Penn Central does not use the services of the Otis --

THE COURT: He is going to try to ask him whether he has ever had complaints about a specific kind of problem.

MR. COUSINS: YES.

THE COURT: Can you tell him a way that he can do this without leading that wouldn't keep us here the rest of the summer?

MR. McMAHON: If it is his job, sir. I don't know that --

THE COURT: Objection overruled.

BY MR. COUSINS:

Q Let me ask you that question. So one of your jobs is servicing an account receiving field complaints and problems from customers?

A Yes, it is.

Q It is a part of your job, isn't it?

A Yes.

Q From time to time is one of the complaints you receive in the field from customers the binding or slowing up or stopping of the railings on escalators?

A Yes, it has been.

Q Does that happen with some frequency, that complaint?

A Yes, it does.

Q Incidentally, sir, assuming this escalator was sold in 1965 and installed a year -- actually installed and operated a year or a year-and-a-half later, would it be a usual or an unusual occurrence for the owner thereof to require a new handrail by 1974?

A It would be a usual occurrence.

Q Is that something, then, that wears out from use over that eight or nine-year period?

A That's correct.

Q Do you have any knowledge, sir, or do your company records indicate who does inspect the escalators at

Penn Station?

A Would you repeat that again, please.

Q Do you have any knowledge or do your company records indicate who does do the inspections and maintenance on the escalators at Penn Station?

A To the best of my knowledge, it is a staff maintained by Penn Central people.

Q Incidentally, does Otis have an office in New York City?

A Yes, they do.

Q Where is that located?

A They have an office at 250 Hudson Street.

Q Does Otis also -- that's lower Manhattan right here.

A That's correct.

Q Does Otis also have complete overhaul facilities for the complete overhaul and repair of escalators? I don't mean at that address, but in another location?

A Yes, they do.

Q Where is that, sir?

A It would be either at one of their factories, either in Bloomington, Indiana or Yonkers.

Q Yonkers, New York?

A New York.

Q Thak you. In the normal course of events are the handrails supposed to move in the same direction, at approximately the same speed?

A Yes, they are.

Q Is that about the same speed that the steps move at?

A Yes, it is.

Q Can you tell us, sir, and if you don't feel qualified to answer please say so, as you receive field complaints and problems from the customers, if somebody calls you and tells you that a handrail has stopped or slowed down or is out of synchronization, would you consider that a malfunction, sir?

A Yes, I would.

Q Is that something that you would send, assumming that happened, is that something that you would send to an Otis person -- assumming there was a contract-- is that something you would send an Otis person to fix or tell the owner to take care ot that himself?

A That's something we would send an Otis person to fix, assumming that the unit is under maintenance.

Q Yes, under a contract.

A Yes.

Q Would Otis refuse to sell an escalator to

someone who doesn't wish a service contract?

A No.

Q One doesn't necessarily have to go with the other; is that correct?

A That's correct.

Q Can a customer who has purchased an Otis escalator also obtain a copy of that checklist that's in evidence if they wish to buy it?

A Not normally.

Q In other words, that is something that Otis uses in their carrying out of their obligations under a service contract?

A That is correct.

Q I'd like to read to you some of Mr. Cadogan's deposition which has now been read to the jury and which was also read to you at your deposition, and that is on page 27 of your deposition, which is a quote verbatim from page 34, line 17, of Mr. Cadogan's deposition. He is the usher who operated the escalator.

MR. McMAHON: Just a moment. I don't know where you are?

MR. COUSINS: Page 27 of Mr. Gilliard's deposition.

Q In fact, do you recall,sir, being asked this

question or being read this question which was asked of the usher: "During the five years you have been an usher at Penn Central, what malfunctions have you observed at an escalator, such as the one involved in this accident?

"Answer: The railing, when you started the escalator, sometimes one are, one railing moves and the other one doesn't move, and the escalator started clicking and we take it out of service."

Would that be consistent with the type of field complai[illegible]u indicated that you received with some frequency, a description of it?

A With some frequency, yes.

Q Does the stic[illegible]ng or binding of an arm sometimes involve one arm and sometimes involve both arms?

A Occasionally.

Q Incidentally, if a customer specifically requests and is willing to pay for it, will Otis sell and install an Otis handrail even though the particular unit may not be under a specific maintenance contract?

A Yes.

Q Was any request made by Otis to have Otis install the replacement handrail which was replaced and installed in 1974?

A I have no way of knowing.

Q On the sales record, are there any records which would indicate whether or not a request was made? First of all, if the request was made, it would be complied with if the customer is willing to pay for it, would it not?

A That's correct.

Q Is there anything in the record indicating, either from the charts or anything else in the notations as to whether or not Penn Central requested Otis to install the replacement handrail?

A There is nothing in the record.

Q In this case, though, you are certain that Otis doesn't install the handrail; is that correct?

A Yes, I am.

Q Incidentally, you were present here while I was reading some of Mr. Cadogan's testimony earlier today?

A Yes, I was.

Q In connection with how long it takes to bring the escalator steps to a complete stop after the stop-button is pushed, can you tell us, sir, how long it takes?

A A few seconds.

Q About three to four seconds, would that be fair?

A I would say more towards three seconds.

Q But it is certainly not something that is absolutely instantaneous, is it?

A No, it is not.

Q If the escalator is shut off while the railings are out of sychronization or binding or slipping, would it still, sir, take the same amount of time to bring the escalator to a complete stop from the time the button is pushed or would it happen faster or more slowly?

A I think we are getting out of the area of my expertise.

Q Is there someone in the courtroom whom you feel would be more knowledgeable in that area

A Yes, there is.

Q Who is that, sir?

A Jack Sherzer.

Q He is the superintendent of repairs?

A That's correct.

Q Can a customer who decides to maintain his own escalator purchase a complete owners' service manual from Otis, will you sell him one, to maintain his own escalator?

A No, we will not.

MR. COUSINS: Thank you very much.

MR. McMAHON: May I have a few questions?

CROSS EXAMINATION

BY MR. McMAHON:

Q Mr. Gilliard, I would just like to ask you, within your knowledge as a sales representative to an account man, a couple of quesions. One is this: If an escalator was inspected on a Tuesday and was in good operating order and nothing was done to it and it was inspected on Thursday and found to be in good operating order, would you say hypothetically, sir, it would have to be in good operating order on Wednesday?

MR. COUSINS: Your Honor, I object to that.

THE COURT: Sustained.

Q I am going to show you, first of all, Defendant's Exhibt 2. I am going to refer you --

THE COURT: Plaintiff's or defendant's?

MR. McMAHON: I'm sorry. Plaintiff's Exhibit 2.

Q --I refer you to an arrow and over to B 7, and tell you, sir, this was introduced as an inspection report of the B 7 escalator on April 12, 1975.

Is there anything on that report where the arrow is pointing that would indicate to you that the escalator was malfunctioning on April 12, 1975?

MR. COUSINS: Your Honor, I will object to

that. Unless there is something technical about it which requires an expert to interpret it --

THE COURT: Does it not speak for itself, Mr. McMahon?

MR. McMAHON: Yes, sir.

THE COURT: Sustained.

MR. McMAHON: He was put on as an expert. I am wondering, can I ask that question again, about if an escalator was found to be in good working order --

THE COURT: No. You asked it once. There was and objection and it was sustained.

BY MR. McMAHON:

Q Mr. Gilliard, you recall being at the office of Fuschberg & Fuschberg on April 13, 1976?

A Yes, I do.

Q You recall your deposition was taken?

A Yes, sir.

Q Were you asked this question, sir, and did you give this answer:

"Question: --

MR. COUSINS: What page?

MR. McMAHON: Page 37, line 3.

"Question: And if an escalator was inspected on a Tuesday"--

MR. COUSINS: Objection, your Honor. He is reading what you just sustained the objection to, verbatim, word for word.

MR. McMAHON: I am doing it out of a deposition now. No objection was made.

THE COURT: I don't care whether an objection was made or not. The objection is sustained. And don't do it any other way. Let's go on to something else.

Q Do you know anything about the operation of the B 7 escalator at all?

A You are saying the specific operation of that specific escalator?

Q Yes.

A No, I do not.

Q Do you know whether it was operating properly on April 12th?

MR. COUSINS: Objection, your Honor.

THE COURT: Sustained. He just said he doesn't know anything about its operation.

Q This railing that you said that the railroad purchased, that wa s back in '74?

A If my memory serves me correct.

MR. COUSINS: January 18, 1974.

Q Was there any indication to you that the railing was put in improperly?

MR. COUSINS: Objection, your Honor. He has never seen or inspected it. How can he possibly know. He didn't install it nor did Otis.

THE COURT: He apparently has said he didn't know anything about its actual function. Do you have any idea whether it was installed correctly or not?

THE WITNESS: None whatsoever.

THE COURT: Next question.

MR. McMAHON: I have no further questions.

THE COURT: Thank you, Mr. Gilliard.

(Witness excused)

MR. COUSINS: Your Honor, at this time I would like to finish reading from the deposition of the defendant by Mr. Cadogan which I had interrupted to put this witness on.

Page 39, deposition of Lloyd E. Cadogan, the usher of the Penn Central in charge of the escalator there.

"Q How did you first become aware that Mrs. Monroe had been involved in an accident?

"A I heard people start hollering.

"Q This was coming from the escalator itself?

"A Yes.

"Q Do you happen to know whether or not Mrs. Monroe was the first person on the escalator?

"A No. She wouldn't have been the first person. I am speaking of when I got to her. There were people ahead of her when I got to her.

"Q Were people rendering assistance to her when you got there?

"A When I got there I had to stop the escalator. She was on the escalator. There were a couple of people. Then she collapsed on the escalator, the people naturally would back up.

"Q Let's go back to exactly what you did observe: Do you know of your own personal observation whether or not Mrs. Monroe was the first person to go down the escalator?

"A No. She couldn't have been.

"Q Did you see? I asked you before if you saw--

THE COURT: Mr. McMahon is impressed with all the expression you put into your voice. Maybe you could read it a little more blandly.

MR. COUSINS: Reading depositions is boring enough, but I will try.

THE COURT: Bore us a little and just sort of read it gently.

MR. COUSINS: Resuming on the bottom of page 39.

"Q Did you see? I asked you before if you saw the first person going down the escalator, and you said no.

"A Right.

"Q Did you see Mrs. Monroe get on the escalator?

"A No.

"Q Do you know to your own personal observation how many people, if any, got on the escalator ahead of her?

"A At what point, my observation?

"Q You didn't see the first person get on the escalator and you didn't see her get on?

"A That's right.

"Q Prior to learning or becoming aware that she was injured on the escalator, had you seen her at all?

"A Yes, I saw her. She was standing at the gate when I was waiting for the signal that the train would be ready to be boarded. In fact, I was talking to her.

"Q You were speaking to her prior to her being injured?

"A Yes.

"Q Can you tell us what she was wearing?

"A Not really. If you go back, I really don't look at people.

"Q You say you spoke to her. Is it your statement that you don't recall what she was wearing?

"A I don't recall.

"Q Do you recall anything about her shoes?

"A Nothing at all about her shoes.

"Q Do you recall if she was wearing a hat?

"A No.

"Q Do you recall if she was carrying anything?

"A Yes.

"Q What was she carrying?

"A A small suitcase.

"Q Can you tell us what color it was?

"A No.

"Q Can you tell us what the conversation was that you had with her prior to her boarding the escalator?

"A Well, it wasn't much of a conversation. The usual run-of-the-mill conversation that people have with a person standing in uniform. She said, "This is the train to Washington?" I said, "Yes." "Do you know if it is ready yet?" I said, "Shortly. We are watching for the man to tell me when it is going to be ready." I don't know how

much further we got. She was telling me she was visiting her sister or daughter, or somebody. We couldn't get any further with the conversation other than that because now it was ready for boarding.

I am talking her her like this and then the guy gave me the waive that it is ready. That was it. Then I went through my little thing with the lights, the escalator and I am gone.

"Q When you were speaking to Mrs. Monroe prior to her accident, during that period of time was the escalator ascending?

"A Yes.

"Q So that you then finished your conversation before reversing the escalator to descending?

"A Yes.

"Q How much time elapsed approximately from the time you were engaged in conversation with her until she was actually injured or until you learned that she was injured?

"A I can't tell.

"Q Was it a few minutes, a half hour?

"A Nobody even got to the end of the escalator to the train platform. Bam, it went like a -- it went like that, a couple of minutes.

"Q Do you know how far down the escalator Mrs. Monroe had gone before the accident occurred?

"A I think she was just approximately about seven steps down.

"Q From the top?

"A From the top.

"Q I take it you heard screams or shouts, or something?

"A Yes.

"Q What did you then do?

"A I shot through the crowd and looked down the escalator, and from the position I was I could see right down there, and I saw what was happening. So I stopped the escalator.

"Q When you first saw Mrs. Monroe in trouble on the escalator, how far down was she then?

"A Like I said, about seven steps down. The escalator was still traveling. I figure maybe a third down from the top. It might be twelve steps. But she was clear in my vision and I am not the tallest person in the world, and I could look through the crowd and see her.

"Q Percentage-wise from the top to the bottom of the escalator, assuming she was seven steps from the top, is that a quarter of the way down, a half of the way down?

"A About a third.

MR. McMAHON: He heard about it when she was seven steps down, then he stopped it when she was a third of the way down.

I don't know if it is the same, or what.

MR. COUSINS: That's what I am asking.

"Q You said you looked.

"A With the escalator moving.

"Q You wouldn't know how far she was when you first heard the scream?

"A No. This could have happened five seconds after she stepped on the escalator.

"Q When you saw her for the first time she was on the escalator about seven steps down?

"A Yes, about one-third of the escalator.

"Q The escalator is approximately 21 steps from top to bottom?

"A The steps are pretty short.

"Q Would it be a fair statement that she was about the first quarter down?

"A Yes.

"Q When you looked, what did you see?

"A The crowd. When I saw her down --

"Q What do you mean by "down?"

"A She was collapsed, and the people ahead of her were trying to hold her up. Then I hit the escalator and stopped it right then. Then I moved the crowd aside and I went down and tried to bring her up.

"Q When you went down you stopped the escalator

"A Right.

"Q Did it stop immediately?

"A Yes.

"Q You then went down approximately whatever number of steps it took to reach her?

"A Yes.

"Q Approximately how many steps was she down from the top?

"A I figure one-third.

"Q What did you do to assist her to the top from the time you got there? Tell us everything you did.

"A I got the people off, I said, "Let me get down to her." I got down and saw what was happening.

"Q What was happening? What did you see?

"A She was all contorted.

"Q Her foot?

"A Yes.

"Q Did you observe a broken foot or ankle?

There was an objection by Counsel

"A I didn't know what the condition was until we got her upstairs. She didn't seem to get up. The people had to hold her because when she collapsed the thing was going and they were holding her up. When I stopped the escalator, I was in a position to bring her up myself.

"Q When you got to her, was her stocking or foot caught between two steps?

"A No, not to my knowledge. Whatever happened, I tell you the truth, I don't know what happened. I was concerned with moving her off that escalator.

"Q For example, did you remove her shoe?

"A No.

Page 47, line 6.

"Q In order to enable you to lift her up, did you do anything to her foot?

"A No.

"Q Was her foot caught?

"A No.

"Q Did you notice if her stocking was torn?

"A No.

"Q Did you observe any blood on either foot or ankle?

"A I didn't observe any blood. You have a lot of

people hanging around. I grabbed her up with the help of the people ahead of me and I got her to the top of the escalator.

"Q Did you get her up by yourself?

"A The two passengers that were ahead of her, they assisted me with her weight.

"Q Were these both men?

"A I don't know if that was a man or a woman. It must have been a couple, a man and woman.

"Q Do you know their names?

"A I don't know them. They never even hung around. Once we got the lady upstairs, these people took off for the train. I wasn't concerned with looking for witnesses, I just wanted to get her off the escalator.

"Q Did either of these people that helped you, the couple or the man, tell you what, if anything, they had done to help her before you got there?

"A There wasn't anything, I never saw them, really.

"Q How much time elapsed from the time you first heard the commotion until you actually got down to Mrs. Monroe?

"A Maybe a couple of minutes, sir.

"Q Do you have any personal knowledge of what

went on in that period of time from the time you first heard the commotion until you got to her?

A No.

Q Do you have any personal knowledge of how the accident actually happened; what caused her injury?

"A No. That is a mystery to me. I don't know how it happened.

"Q Did any police officer come to the scene of the accident?

"A Sure.

"Q Did you speak to any of them?

"A Well, let me explain. After getting Mrs. Monroe up into the area, the cleared area, we had set the train for the loading of passengers over on the other side. I stood there with her until the police arrived.

"Q Did any of the people who helped you bring her up reamin?

"A No. They kept going on the train. When the police arrived, then I went across. They had her in hand now. I went across on the other side to finish loading the train. Shortly after that the wheelchair came and they put her in it, and I came back to my original position to give the signal to the conductor to let the train go.

"Q Coming back to my original question: did you

speak to any of the police officers who came?

"A No. We didn't have any conversation. I told them, "This is the lady that was hurt on the escalator."

"Q Did any of the police officers ask you for your name or identification?

"A No.

"Q Were you asked to give any statement to the police department, the Penn Central Police?

"A No.

The preceding question.

"Q You had your nameplate on at this time?

"A Yes.

"Q When you are involved in an accident or present when an accident occurred on an escalator, are you required to fill out any kind of accident report.

"A No. If a situation like this exists, the station master is informed of the existing conditions and from that point on he takes it over.

"Q Did you ultimately fill out or look at or sign any accident report?

"A No,

"Q Never.

"Q Did you ask any of the people on the escalator

what had happened?

"A No, sir.

"Q To your knowledge, were you present while any of the police officers asked any of the passengers what had happened?

"A No, sir. I was on the other side of the building.

"Q Did Mrs. Monroe offer you any explanation as to what happened?

"A No, sir.

"Q Can you describe how she appeared to you at the top of the escalator where you were waiting for the wheelchair or ambulance?

"A Well --

"Q Let's start with her foot: how did her foot look?

"A It looked like it had a break or fracture of some kind from my quick glance at it. She was pale. She is a remarkable woman because she never said a word. You can see that she had a situation there, but she never said anything to me at all.

"Q Did you observe any bleeding or any blood while you were at the top waiting for the ambulance?

"A After I let the train go and came back over to

where the wheelchair was, I noticed a little blood on the entrance to the escalator.

"Q On the floor itself?

"A On the floor itself.

"Q Do you know a Sergeant Kenwood of the Penn Central Police?

"A Yes.

"Q Do you know Lieutenant Rockefeller?

"A Well, I have seen him. This is in the course of my duties.

"Q Did you speak to Sergeant Kenwood at all in connection with the facts surrounding this accident?

"A No.

"Q Have you spoken to Lieutenant Rockefeller regarding any of the facts of the accident?

"A No.

"Q How about Patrolman Richard Sova?

"A No.

"Q Can you tell us who Mr. Kelley is, J. Kelley?

"A Yes. That's the assistant station master.

"Q Did you speak to him at all about this accident?

"A Well, he is my immediate superior that day. He is the one I reported this to, that there was an accident

on the escalator.

"Q Was he present at all when the accident occurred?

"A He was downstairs directing the departure of the trains. He had to come upstairs.

"Q By the time he got there, the accident was completely over?

"A Yes.

"Q Did you participate in any investigation whatsoever to determine the cause of this accident?

"A No, sir.

"Q Did you observe any people near the controls of the escalator at the time you heard the commotion? I am talking about the controls on the upper concourse on the left-hand side of the escalator. When you heard there was an accident and you looked over, did you see anybody near the controls at the escalator?

"A No, there was nobody near the controls.

Top of page 54.

"Q Mr. Cadogan, you told us when you stopped the escalator up picked Mrs. Monroe up and brought her up to the top, you took passengers over to the west gate; is that correct?

"A Let me hear your question again.

"Q After you discovered Mrs. Monroe had been injured and you stopped the escalator, you then went to her and you brought her back up?

"A Right.

"Q The escalator was stopped; is that correct?

"A Stopped.

"Q Did you start the escalator again thereafter?

"A The escalator was started after this whole thing was over because we loaded the train on the other side. We couldn't use the escalator with the accident.

"Q When didyou start the escalator again?

"Q After everything was cleared up, after everybody was gone.

Page 55, line 5.

"Q Tell us how you did that. You told us you went over to the other gate and came back to the B 7 gate. First tell us what the term means "closing out the train."

"A I will get into that. It is now ten o'clock. I have to tell this guy to go. The gate is closed, no more passengers, so we can take the train out. That's it.

In answer to your question , when the accident occurred to keep loading the train, I shifted the crowd over to the other gate, let them continue to go on the train while the lady is waiting for the chair or whatever,

the police officers. After the police officers got there, also with the wheelchair, and she got into the wheelchair and they started their business of moving it, then I started the escalator back up and told that guy, 'You can go, the train is now loaded, it is ten o'clock, go ahead '.

Page 56, line 14.

"Q Did you use the escalator B 7 again that day?

"A After the accident occurred?

"Q Yes.

"A I didn't use it personally. I don't remember using it.

I decline to read the next sentence because it is speculation, your Honor, not knowledge, unless there is an objection. I asked Counsel, "Will you provide us with a copy of the safety book manual which incorporates the procedures for operating the escalators, " Counsel said yes, and that's in evidence now.

That is all I have to read from this deposition, sir.

MR. McMAHON: Page 56, line 14.

"Q Did you use the escalator B 7 again that day?

"A After the accident occurred?

"Q Yes.

MR. COUSINS: Objection for the same reason. It is not to his own personal knowledge and it was a presumption. I will show it to you. I think my objection is well founded. That's why I didn't read it.

THE COURT: Sustained.

MR. MCMAHON: May I mark that for identification? Page 56.

(Defendant's Exhibit A was marked for identification.)

MR. McMAHON: Exhibit A is page 56 of the Cadogan deposition.

THE COURT: Is that all, Mr. McMahon?

MR. McMAHON: Yes, sir.

THE COURT: Go ahead, Mr. Cousins.

MR. COUSINS: I will call Mr. Jack Sherzer to the stand.

J A C K S C H E R Z E R, called as a witness by the plaintiff, having first been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. COUSINS:

Q Mr. Scherzer, by whom are you presently employed, sir?

A Otis Elevator Company.

Q Are you here pursuant to a subpoena served upon your employer and yourself by the law firm of Fuschberg & Fuschberg?

A That's correct.

Q Incidentally, you were asked to be here by the defendant?

A No.

Q You haven't received a subpoena or any request?

A No.

Q Would you tell us, sir, first of all, how long you have been with Otis and what your duties have been?

A Twenty-one years, and repair superintendent, lower Manhattan office right now.

MR. McMAHON: What's that?

THE WITNESS: Repair Superintendent for Otis Elevator Company and I am in the lower Manhattan office.

Q For how long have you been the repair superintendent?

A About a year-and-a-half now.

Q Are you personally familiar with some of the the training that Otis repairmen and maintainers go through prior to going out in the field and servicing

Otis customers?

A You work as a helper approximately four to six years before you become a mechanic?

Q Is that what they call an apprentice?

A Right.

Q Are there manuals and any classroom instruction provided by Otis?

A Yes, there is.

Q Does this go on during that four-year period?

A Yes, it does.

Q Do you then become a journeyman? Is that term used?

A That's correct.

Q That's after you complete your apprenticeship?

A That's right.

Q How long does the journeyman position last?

A Until you retire.

Q When you are a journeyman you are a full-time in-charge repairman?

A That's right.

Q Incidentally, is there a union for journeymen in your field?

A That's correct.

Q Are there any minimum standards that the

union requires?

A Yes. You have to take a test through the union too to become a journeyman.

Q There are certain minimum standards of competence which someone must demonstrate before they are admitted into the union?

A That's correct.

Q We have in evidence, sir, Plaintiff's Exhibit 6 which Mr. Gilliard was kind enough to supply us with, which is a photostat of the portion of the parts catalog for the 32-RB escalator, the type involved in our case.

Did you speak with me for a few minutes here in court during the lunch break?

A Yes, I did.

Q You came over from your office where you work at 250 Hudson Street?

A Yes, I did.

Q Are you familiar with the 32-RB type escalator?

A Yes, I am

Q Are you familiar with a problem that occasionally occurs such as slippage or binding of a railing?

A I am.

Q Are any of the parts involved in the mechanics of the railing or to which the railing is attached, are any of those parts, that portion of the escalator, contained in Plaintiff's Exhibit 6 which is in front of you?

A Yes, they are.

Q Can you show the members of the jury which parts they are, sir, with the Court's permission?

A All the parts?

Q That pertain to the railing, what it runs on and what moves it, and things like that.

A This is actually the handrail drive.

Q Page 9.

A The lower newel stand, that is where the handrail passes.

Q Page 7.

A These are the adjustment rollers for the tension of the handrail on page 10. They are the basic parts that you are concerned with, I think. Of course, you could keep going and going.

Q These are the main ones involved with the railing?

A That's right.

Q Can you explain for us the mechanics, and

use the diagram, and with the Court's permission show it to the jury, to explain for us the mechanics of how the handrail is affixed to the mechanical portions of the escalator and how it moves in synchronization with the other handrail and with the steps?

A The main part of an escalator is a motor-driven --gear driven, and it is chain driven from the upper drive mechanism. From that there are two sprockets that drive a handrail drive, which the handrail of course goes around the top of the escalator and at the bottom. It is continuous.

In the intermediate part of the escalator there is handrail roller guides that a tension device is mounted to.

Q Can you come down and show that to the jury?

A The handrail comes across the top and down across the escalator --

THE COURT: I think some of the jurors can't see.

A (continuing) The handrail actually goes across the top newel roller, as we call it. As it comes down it passes over these rollers. Of course, it goes down along the bottom. It is on guides. As it comes across the rollers, this is where we adjust the tension. We take up on

the threaded rods. As you pull the rollers up, you make the handrail tighter and you get more traction on the rollers as it comes around. That is how we adjust the tension.

Q Does that also have to be done when it is installed initially?

A Yes, it is.

Q If there is a replacement of the railing due to the usual wear and tear over the years, does it also have to be carefully adjusted there?

A Yes.

Q Even assuming it is adjusted properly and installed properly, is that something that from time to time has to be checked through normal maintenance?

A Yes, it does.

Q Can you explain to us, please, the mechanics of how and why a railing on an escalator from time to time gets out of synchronization with the other railing and with the steps.

A A handrail in time stretches, which you lose the tension on the adjustment, which it has to be gone over. There is vandalism on them. Children sometimes jam things in them where they stretch. A number of things. Wear on parts.

Q Is it possible to check the tension on an escalator without disassembling the entire unit?

A Yes, there is.

Q Is that part of routine maintenance that should be done periodically.

A I don't know anything about Penn Central maintenance.

Q Will maintenance on it reduce, the checking of the tension and keeping it properly adjusted, will that reduce the likelihood of it slipping?

A As far as us taking care of an escalator, yes.

MR. COUSINS: I have no further questions.

CROSS EXAMINATION BY

MR. MCMAHON:

Q You can also determine if an escalator is running properly by ovservation, can you not? I mean, if you turn it on and the handrail is moving with the steps, it is operating properly, isn't that right, sir?

A Most of the time, yes.

Q If this escalator in question here were operating properly the day before this accident and operating properly the day after the accident and nothing was done to it in between, wouldn't you say it was operating properly

the day of the accident?

MR. COUSINS: Objection, your Honor.

THE COURT: Sustained.

MR. McMAHON: He is the expert, Judge.

THE COURT: I heard everything. I ruled on the objection. Why don't you go ahead, Mr. McMahon.

Q Did you tell us about -- you said that the handrails bind.

A Do handrails bind?

Q Yes. In response to a question by Mr. Cousins.

A I didn't say that specific handrail bound, but handrails can bind, yes.

Q Handrails can bind? Would you say that this handrail bound?

A I have no idea.

Q How do you correct a handrail binding? Assuming there was one.

A You would look at it.

Q What would you do with it?

A What would I do with it? I would have to inspect it to see why it was binding.

Q If it is binding, does that mean it stops?

A It could slow down. It doesn't have to stop

completely.

Q How do you correct it?

A How do you -- you would have to determine the reason why it was binding.

Q Could you give us some of the causes of binding?

A Burring wear, shiv wear, it could be a lot of reasons.

Q That would entail a mechanical call adjustment, isn't that correct, or repair?

A That's correct.

Q It just couldn't start up again, is that right?

A I don't follow the question.

Q It would have to be a mechanical adjustment or repair to get it started up again, isn't that correct, to the handrailing.

A A handrail could slip. It doesn't mean it would stop completely or it can stop completely. I don't know the particular case.

Q In any event, we are agreed, aren't we, that a binding would entail a mechanical repair or adjustment; is that correct?

A In some cases, yes.

Q You mean it would correct itself?

A No. You are asking me a question, would it have to be repaired. A handrail could slip and you could just touch --

Q I am talking about a binding.

A I don't have a definition of binding. Are you saying stop or slip.

Q Stop.

A Then it is not a bind. The binds could be at certain spots, it could bind. It could turn, stop, turn, stop.

Q What is a binding?

A What is a binding?

Q Didn't we hear Mr. Gilliard describe a binding?

MR. COUSINS: No. The word bind.

Q Bind?

A Did we hear him?

Q Let's use the terminology bind. How does a handrail bind?

A Like I just told you. It could be a number of reasons why it binds.

Q Would that entail a mechanical adjustment or repair?

A In most cases, yes.

Q We are taling now about this slippage. Does that mean there is something wrong with a gear?

A There is not enough tension on the handrail-tension device, in most cases.

Q That would be another adjustment to be made; is that correct?

A That's correct.

Q Or repair?

A Correct.

Q You were called in, I take it, you were shown I believe the exhibit where the railroad bought a handrail; is that correct?

A That's correct.

Q You and I know that the railroad installed that handrail; is that correct?

A That's correct.

Q That was about a year and three or four months before this occurrence on the escalator, isn't that correct, sir?

A What I have heard in the previous testimony, yes.

MR. McMAHON: I am afraid to ask the next question, but I will try it.

Q Assuming that the handrail was operating

properly from the time it was installed in January at least through April of 1975: would that indicate the handrail was installed properly? As far as you know.

A I have never seen this escalator so I wouldn't -- it would be hard for me to answer that question.

Q If a handrail was operating for six months or a year without any problems, wouldn't that be some indication that it was installed properly?

MR. COUSINS: Objection, your Honor. If anything, that's for the jury to decide.

THE COURT: Is that something that you feel expert about?

THE WITNESS: I mean in this particular case, I have never seen the working done by this thing put on this escalator, so I really wouldn't know how it was installed. It would be hard for me to answer that question.

Q You inspect escalators, I assume, or used to, anyway; is that correct?

A Yes.

Q When you go to an escalator and it is operating properly, you have, I assume, by this time a trained ear for escalator malfunctions.

A I'd say I know a little bit about them.

Q When something happens to a railing, for instance, whether it binds or slips, there is a loud clicking nose, is there not?

A Not all the time.

Q Is the slippage and the binding -- you can see that, though, can you not, or at least feel it?

A That's correct. You can see it.

MR. McMAHON: Thank you very much.

MR. COUSINS: Your Honor, I really have no redirect but I omitted one important question on direct.

THE COURT: Go ahead.

REDIRECT EXAMINATION BY

MR. COUSINS:

Q Sir, what's the speed that the typical 32-RB escalator runs at, feet per second or however you measure it.

A I really --

Q Is there a range from an all-time low to an all-time high? Give us some idea of what they generally run at.

A I really I don't -- on that particular escalator there, I couldn't give you the exact speed.

Q Can you give us the range of speed for a 32-RB escalator, forgetting the particular one involved in

this case?

A I can't.

Q No idea at all?

A No.

MR. COUSINS: Thank you very much.

THE COURT: Thank you, Mr. Scherzer.

(Witness excused)

THE COURT: Let's suspend for the day, ladies and gentlemen. Let's plan to resume at 9:30 tomorrow morning, please. Good afternoon.

(Court adjourned)

MONROE vs. BLANCHETTE

New York, N.Y.
July 27, 1976
10:a.m.

(In open court, jury not present.)

MR. McMAHON: Your Honor, yesterday I attempted to examine Mr. Gilliard with respect to the escalator also functioning properly, and would he assume in effect that the escalator was operating properly the middle day. I attempted to do that twice; once by indirection what I could not do by direction.

I want to call your Honor's attention to Louis against Baker, 526 Federal Section 470, which stands for the proposition that if the jury found that -- the jury could presume that a hand brake on a railroad car that was found to be operating properly on a Monday and found to be operating properly on a Wednesday, could be presumed to be operating properly on a Tuesday.

THE COURT: Sure. The jury can find that. I am going to let you argue it. I don't think it is a subject for expert opinion, and that's why I sustained the objection.

Now let us proceed.

(Jury present)

THE COURT: Good morning, ladies and gentlemen. We are a little bit late but ready to proceed.

We are going to plan, bargain from catastrophe, to finish the presentation of the evidence tody. Let's proceed accordingly. We may have to sit -- I am sure we will have to sit here later than yesterday, but it is urgent to get this case over with by tomorrow.

E L I Z A B E T H C. M O N R O E, the plaintiff, called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. COUSINS:

Q Mrs. Monroe, are you making a claim against the Penn Central Transportation Company as a result of injuries you sustained on an escalator at Penn Station on April 13, 1975?

MR. McMAHON: Objection.

THE COURT: Sustained.

Q Tell us your date of birth, please?

A May 17, 1898.

Q Your present age is what?

A Seventy-eight.

Q I took you for seventy-seven.

MR. COUSINS: May I ask the Court to take judicial notice that according to the U.S. Life Expectancy Tables her life expectancy based on age 77, which is what I checked --

THE COURT: Her arithmetic is better than yours, so let's agree that she has computed her age accurately, and it is 78.

MR. COUSINS: I will doublecheck the figure. In either case, the Court will take judicial notice later.

THE COURT: Sure.

BY MR. COUSINS:

Q Mrs. Monroe, are you presently married, widowed, single? What?

A I am a widow.

Q How long have you been a widow?

A About six years.

Q On April 13 of 1975, did you undertake a trip somewhere from your home in Queens?

A Yes.

Q Where were you going that day?

A I was going down to Washington.

Q For what purpose?

A To see my sisters. They were going to meet me.

Q They live there.

A One in Alexandria and one in Arlington.

Q What time did you leave your home that morning?

A Eight o'clock.

Q When you left to go to Washington at eight o'clock, what day of the week was that?

A Sunday.

Q Did you have an appointment with any doctor in Washington or Virginia?

A No, no not when I left, no.

Q Will you tell us how you got to Penn Station from your home? Just very briefly.

A Long Island Railroad.

Q Approximately what time did you arrive that morning at Penn Station?

A About twenty-five minutes after eight or -- It doesn't take long to come from Bayside.

Q You got there about twenty-five after eight?

A Yes.

Q Did you know what train you expected to catch?

A The ten o'clock train.

Q To go to Washington?

A To go to Washington.

Q So you arrived at 8:25 and you then had to wait for your ten o'clock train; is that correct?

A That's right.

Q Had you taken that train before, by the way?

A I always took that train.

Q What did you do when you first got to Penn Station at 8:25?

A I went to Horn & Hardart and had breakfast.

Q Is that located in Penn Station?

A Yes, right on the -- in the waiting room.

Q Approximately what time would you say you left Horn & Hardart?

A I was in there awhile. I was sort of waiting there.

Q Give us an approximation. Was it after nine when you finished breakfast?

A Yes.

Q Sometime after nine you finished --

A Sometime after nine.

Q When you finished breakfast, what did you do?

A I sit down and watched -- out in the waiting room.

Q Incidentally, I noticed this morning that you were using a cane. Were you using a cane the morning of April 13th?

A No, I wasn't using a cane. I never walked with a cane before.

Q Were you traveling by yourself or with anyone else?

A By myself.

Q Prior to April 13 did you ever require any assistance in traveling?

A No.

Q What did you dowhen you left the Horn & Hardart while you were waiting for the train?

A I sit out in the waiting room and watched the board to see when my train would come up.

Q Did a sign go up? Tell us what happened from then on?

A The sign would aways go up about fifteen minutes before they board the train.

Q That would be, then, about 9:45, right?

A Yes.

Q At approximately 9:45, what did you then do?

A I walked over, asked whether the train was going to go down to Washington, and the usher said,"Yes, on this track, I will soon open the doors." They were a little late opening them. About twelve minutes, it was.

Q Twelve minutes to ten.

Q Incidentally, how did you know what track to go to?

A I didn't see any other usher around to ask, and I asked him what track it was to go on.

Q He said that't the right track that you were at?

A "Just wait. I am going to soon open the doors."

Q Did you engage in any conversation with the usher? Did you speak to him for a few minutes?

A Yes.

Q Just generally, what did you chat about?

A Well, I asked him whether this was the train, and he said, "Yes. Wait." Then when he opened the door he put on the escalator and he said, "Okay." And he said, "Have a good day," and I said, "Thank you. You the same."

Q Did you actually see him start the escalator descending?

A Yes.

Q Would you describe for us what you saw him do in order to effectuate that?

A Well, he stooped down and turned it on, but I didn't see him standing up. I saw the steps rolling down.

he did too. He said, "Okay." I was the first one on.

Q When he was stooped down to turn it on, was this at the escalator?

A Yes.

Q He was still stooped down at the controls when he said, "okay, go ahead."?

A Yes.

Q Did he ever at any time before you got on the escalator get up and walk out of the area?

A I didn't see that. I was on the escalator going down.

Q When you actually got on the escalator, he was still stooped down by the controls?

A Yes.

Q Was he wearing a uniform, by the way?

A Yes.

Q Were there any other people in the area next to you, near you, as the boarding process started?

A Oh, yes. They were all going to follow me, but I was the first one.

Q Did other people follow you onto the escalator?

A Yes.

Q Slowly, keeping your voice up, in your own

words, tell us what happened from the time you got on the escalator up until you were injured.

A Well, I was about a quarter to a half way down, I thought, when I had my right hand -- I had my pocketbook and my suitcase in it, and I grasped the railing that you are supposed to hold on, and that was going down with the steps, and I was all right until I got down about between a quarter and a half way down, when I noticed something was wrong, my hand was going back, and I thought probably I was going to be going backwards, and I -- it pulled me over to the side, to the left side, but I still held on to the railing, and it was pulling me. And then I heard a clicking and I heard a shout, "Hold it." Then the man back of me, I think, he might have been right in back of me, because he said, "Don't panic, I will hold you, I won't let you fall, I will straighten you up. you will be all right."

So then he asked me to give him my suitcase. I said, "I can't raise it." I said, "I am caught."

Q At that point, right there when you said you were caught, were you feeling any pain anywhere in any portion of your body?

Q In my foot.

Q Which one was that?

A The right one.

Q Please continue.

A Then he said, "I will need help," and then somebody helped him, and he stepped over and released me from the escalator.

Q When you said "released" you, you mean got your foot out?

A Got my foot out.

Q What was done with your bag, with your suitcase?

A That was up at the top of the steps when I got up, I mean when they carried me up.

Q When you first got on the escalator, in addition to the steps moving, were you yourself walking or were you standing still?

A I was standing still.

Q Had you put your suitcase down or were you carrying it?

A I was holding it.

Q Can you tell us just approximately how heavy it was or what was in it and its size?

A It was a little -- about an inch or so bigger than your suitcase.

Q My green attache case in front of the jury?

A Yes. Just a little. It wasn't heavy. I didn't have anything much in it. Just lingerie, dresses.

Q How long a trip was this, by the way?

A I expected to stay until Tuesday. Sometimes I stayed a day or so longer.

Q This is three days, perhaps four days?

A Yes.

Q Any heavy objects or anything in your valise?

A No.

Q Incidentally, after the person behind you, the other passenger, I guess, removed your foot from the escalator, how were you brought up to the top of the escalator?

A I felt them holding my feet up and carrying me up backwards.

Q I couldn't hear your last answer. Would you be kind enough to repeat it.

A I felt them raising my feet as though somebody was raising my feet and somebody else was holding me back, and they carried me up backwards to the top of the steps.

Q Before you were carriedup, was anything done to the escalator? Specifically, was it stopped or was it

still running?

A He shouted, "Hold it," and then when he shouted, why, then, they stopped it. That was stopped.

Q From the time the man behind who was holding you up shouted, "Stop it," how long did it take for someone to shut that escalator off?

A Oh, it was stopped almost -- a minute or so. It stopped right away, I should say.

Q Be careful with your words. You used the term a minute. Was it a minute or less?

A I wasn't myself at that time, so I will say it stopped instantaneously.

Q It stopped instantaneously.

MR. McMAHON: She didn't say that.

THE COURT: Yes, she did.

MR. McMAHON: I can't hear her.

THE COURT: I know. Try to speak louder, Mrs. Monroe. I appreciate you couldn't hear her, Mr. McMahon, but she did say that. Go ahead.

Q You got on the escalator I think you said twelve minutes to ten; is that correct?

A Yes.

Q How long after you first stepped on the escalator did the accident occur?

A A second or two.

Q Can you tell us approximately how long it took from the time you got on the escalator, you went down a portion, the accident occurred, and you were brought up to the top, approximately how long, how much time elapsed?

A Not anymore than about five or ten minutes.

Q Incidentally,were you unconscious for any time?

A No.

Q When you got to the top of the steps, when you were first brought up there, did you observe any police officers in the immediate area?

A Yes.

Q How did you know they were police officers?

A They had a badge on.

Q Were they wearing anything to identify them as police officers other than a badge?

A They had dark trousers, blue trousers, I believe, and a light blue shirt.

Q And a badge. Were there police officers at the top when you were brought up there?

A They might have carried me up because somebody -- on each side of me was a police officer.

Q At the top of the stairs, tell us what was done for you, what you did?

A There was another policeman came with a tablet.

Q With a tablet?

A You know, a board, to take the history of it. He said, "What happened?" And I said, "I think the escalator reversed on me, " and then he took all the history. He said, "Who should I notify?" I said, "My daughter." I said,"Would you please call her now because she is home, and then she will go out for the rest of the day and if you don't call her now -- "He said,"I will wait until the ambulance comes,"and I said, "Maybe you better call her now because she will leave the house and you wouldn't get her all day.

Q Mr. Sova told us they brought a wheelchair for you. Mr. Cadogan said it was a chair. Which was it?

A A chair from the restaurant.

Q A regular, ordinary chair?

A Yes.

Q Were you at any time put on a wheelchair?

A No.

Q Did an ambulance eventually come? Were you carried to the ambulance on a wheelchair?

A On a chair.

Q Not a wheelchair?

A No.

Q Did you receive any first aid at the scene when they brought you to the top of the escalator?

A Yes.

Q What was done for you?

A When the ambulance came they put a splint on my leg and said, "Don't move it."

Q After they put the splint on were you placed on the stretcher?

A Yes, I was on the stretcher.

Q Did they tie you in or just leave you loose?

A They tied me in.

Q Tell us in your own words how you were taken up to the ambulance?

Q They took me over, on an escalator. They carried me up. He said,"I am going to take her over on the escalator." He told the one man to carry it.

Q How were you taken up?

A On a stretecher.

Q Were you tied in?

A Yes.

Q Two questions specifically: Were you ever at

any time in a wheelchair at Penn Station?

A No.

Q Were you ever at any time carried in a chair up the escalator?

A No.

Q The escalator was stopped for them to bring you up to the top; is that correct?

A That's right.

Q When you got to the top the police were there; is that correct?

A Yes.

Q Did you see anyone turn the escalator brake on before you left the scene of the accident?

A No. I was sitting in front of it. They couldn't have.

Q Incidentally, was there any damage to either one of your shoes?

A No.

Q Could you describe for us, were you wearing a thin high-heel or what type of shoe?

A I only wear a low heel.

Q Can you tell us the approximate width of it?

A About two inches, an inch and a half.

Q I said wide, I mean diamter, the thickness

from side to side of the heel.

A About an inch and a half.

Q At any time while you were on the escalator, were you pushed by anyone?

A No.

Q At any time while you were on the escalator did you trip or fall on anything?

A No.

Q At any time while you were on the escalator prior to being injured, did you feel any weakness or dizzyness? Before you were injured?

A No.

Q Incidentally, you have indicated you have taken this train with some frequency. Had you ever seen on this or any escalator a similar malfunction of your arm going back?

A No.

Q Did you ever experience it?

A No.

Q Where did the ambulance take you to?

A French Hospital.

Q Is that in Manhattan?

A Yes. The nearest one.

Q Were you taken to the emergency room?

A On a stretcher.

Q When you got to the emergency room, you were still conscious, were you not?

A Yes.

Q Can you tell us, please, what was done for you? Not what anyone said. That's hearsay. Just tell us what was done for you.

A Well, the nurse undressed me, and then they got me ready for the doctor to see my foot, and I had pain, and he said,"We are going to give you something, you will be allright."

Q Were you put to sleep before they set your foot or were you conscious and awake while he set it?

A I was conscious. But he told me to lay down and not look at it.

Q So they set your leg in the emergency room?

A Right.

MR. COUSINS: Your Honor, at this time I have here, which I just picked up from the medical records office, a certified subpoenaed hospital record from French Hospital, together with all the X-rays with the Subpoena attached, which I offer into evidence at this time as Plaintiff's Exhibit 11, sir.

MR. McMAHON: Your Honor, I haven't seen this.

Maybe we can wait for the doctor. I probably won't have any objection to it.

MR. COUSINS: I'd like to use some of it now, if I may.

MR. McMAHON: I don't think it is proper to use it for the lay witness.

THE COURT: What do you need it for now?

MR. COUSINS: I'd like to read just one page of it right now, your Honor.

THE COURT: Show him the page you want to read.

MR. COUSINS: The top sheet and this one which I have already given you a copy of.

MR. MCMAHON: If it is his purpose to avoid having the appearance of a doctor, I object to it.

MR. COUSINS: Counselor, you know the doctor is going to be here. I told you that this morning.

MR. McMAHON: With that admission, I certainly have no objection the the record.

THE COURT: Then mark it in evidence.

MR. McMAHON: He is just going to read this part of it now that I have seen.

THE COURT: Mark the whole thing in evidence and just read the part you referred to.

(Plaintiff's Exhibit 11 was received in evidence.)

MR. COUSINS: Your Honor, may I state the subpoena calls for a certified bill, which they forgot, and they are bringing it down. I will have it here by lunchtime.

Ladies and gentlemen, I'd like to read to you from what is called the discharge smear for Mrs. Monroe at the French Hospital.

It indicates: "Admitted 4/13/75, Discharged 5/17/75. Patient was a 75 year old female admitted on 4/13/75 with diagnosis of fracture of right ankle. She came to the emergency room because she fell on the escalator in Pennsylvania Station. Past history, appendectomy and ovariectomy long time ago. Patient denies allergies or high blood pressure or diabetes. She was a 75 year old white female in no distress. She compalined of pain the the right ankle. H.E.E.N.T.; heart, ears, eyes, nose and throat, normal. Check, no masses. Neck, lungs, clear, heart, regular. Breasts, no masses. Abdomen, soft, non tender, no masses. Exgremities, right ankle was deformed, tender and swollen. The neurovascular status was intact. There was an abraison on the medial side of the ankle. X-rays done

on admission showed on the right ankle a trimalleolar fracture with posterior dislocation of the foot. Chest X-rays normal. Post reduction right ankle was reported as complete alignment. The right ankle x-rays taken on 4/22 again and then on 5/1 and reported as healing.

Skipping down to hospital correspondence, I am omitting the lab data, which is just numbers, hosptial correspondence: On admission patient had blood pressure 190 over 100 and pulse rate 112. She was very nervous. The fracture was reduced in the emergency room and a long leg cast was applied. While in the hospital she never had temperature. She was on Keflex for seven days, pain medication and on colace. On 4/18/75 she started going to physiotherapy where she did ambulation with walker, not weight bearing on the right foot.

MR. McMAHON: Your Honor, can we get some ground rules straight now? I don't mind Mr. Cousins reading anything to the jury that is in evidence or from the depositions, but I don't think he should start using inflections.

MR. COUSINS: On the word "not?" Is that the objection?

THE COURT: Let's be a little less expressive, Mr. Cousins.

MR. COUSINS: She did well and on 5/17/75 she was discharged home to be followed by Dr. Papas in his office. The plan was to give her home care assistance and to remove the cast after three to four weeks after discharge.

Final diagnosis: Trimalleolar fracture, right ankle, signed Alexander Papas, M.D., signature of attending physician .

BY MR. COUSINS:

Q Mrs. Monroe, you were in the hospital then for over a month; is that correct?

A Five weeks.

Q How did you leave the hospital when you were finally discharged?

A Well, they took me down on a wheelchair and they had to help me in the car, and my cast was still on above my knee. So I had to get the ambulance in Bayside to carry me in my home.

Q Incidentally, can you tell us a little bit about what your physiotherapy consisted of during the latter portion of your admissions at French Hospital?

A They took me on a wheelchair to the therapy room and they had a walker that I had to learn to walk by just hopping on the one foot and not put any weight on

the right foot.

Q During this period of time you still had the long-leg cast on?

A Yes. It was very heavy and I couldn't hardly get up very much off the floor, but I never put my weight on it for twelve weeks.

Q During the time that cast was on, did you ever have any desire to -- did you ever have an itch under it or have a desire to scratch.

MR. McMAHON: Objection to the form of the question.

THE COURT: Sustained.

Q While your cast was on, did you ever have any itch on your leg under the cast?

MR. McMAHON: Objection to the form of the question.

THE COURT: Sustained. Why don't you ask her for any other symptoms and stop leading.

MR. COUSINS: I'd be happy to.

Q Can you tell us about any other problems or difficulties you encountered or pain you had while you were hospitalized?

A Yes. It pained clear up to my hip.

Q Any other problems?

A Severe pain.

Q Tell us a little bit about how you managed after you left the hospital and went home?

A I had a wheelchair for two months and I had a walker, and I would be pushed to the bathroom and then get on my walker to go in and try to bathe myself. Just by sponge bathe.

Q Incidentally, before your injury, did you ever do any traveling on your own after the death of your husband?

A Yes.

Q Can you tell us a little bit about some of the trips you have taken prior to the accident on your own?

A I went to Europe, I went to the Bahamas and I went to Scandnavia.

Q Have you taken any trips of that nature since your accident?

A No, I don't get out.

Q Do you generally use or continuously use your cane after you were off the walker?

MR. McMAHON: Objection to the from of the question.

MR. COUSINS: I will withdraw it and rephrase it.

Q Have you continuously used anything for assistance in walking --

MR. McMAHON: Objection to the form of the question.

THE COURT: I will allow it.

A Yes.

Q Tell us what?

A I use my cane and my daughter helps me on the one side when I go out. I only go to the car.

Q How is your foot today? Not medically, as a human being, how does it feel?

A Pains all the time.

Q Can you tell us anything else about the way it looks?

A Yes. It is discolored.

Q Incidentally, do you use anything to control any problems you have?

A Yes.

Q What's that?

A I do use what Dr. Papas told me, to soak it, and if it swells to go to bed, but I elevate it now since it is this long, and I take the medicine that he prescribed, but I can't get into his office. So I have my own physician give me the same medicine.

Q Are you wearing anything on your right foot now?

A Yes, a surgical stocking.

Q Was that prescribed for you as a result of this accident?

A Yes.

MR. McMAHON: Objection.

THE COURT: On what ground?

MR.McMAHON: Was that prescribed for you --

THE COURT: What's the ground of the objection?

MR. McMAHON: That is medical testimony, your Honor. It is not from a lay witness.

THE COURT: Overruled.

MR. McMAHON: And it is leading.

THE COURT: All right.

Q As a result of your hospitalization at French Hospital, did the hospital render a bill?

A I didn't get any yet. I guess it will be sent to you.

Q Have you incurred any medical expenses?

A Yes.

Q Have those been paid?

A Yes.

Q Did you incur any other expenses?

A Yes.

Q Tell us about those, if you would?

A Well, I have to pay for the wheelchairs for two months, it was $50.00. I had to pay for my sister's transportation to come up and go back.

MR. McMAHON: Objection. Move to strike.

THE COURT: On what ground?

MR. McMAHON: I will withdraw the objection.

Q Who did the cleaning and caring for your apartment before your accident?

A I did.

Q Following your accident, who did it?

A I had to get somebody.

Q Did you make a list at my request of the expenses you have incurred for cleaning the apartment during your recuperation?

A Yes.

Q Is this that list or is that a portion of the list?

A That's partial -- that's when I came to see you. I have more.

Q But this is what you had as of the date you came to see me?

A Yes. She came twice a week.

Q You say "she." Is that the name of the person on the bottom?

A That's the name of the person.

Q This indicates up until Ocotber second through third, 1975?

A Yes.

Q Is this accurate as of October second through third, 1975?

A Yes, but she still comes.

MR. COUSINS: I offer this in evidence at this time.

MR. McMAHON: Your Honor, as far as I am concerned, this is a lot of numbers that are totally immaterial to me. I don't know what it means.

THE COURT: We will receive it.

(Plaintiff's Exhibit 12 received in evidence.)

MR. McMAHON: Would you like to look at it, Judge, first?

THE COURT: No.

Q Mrs. Monroe, you have indicated that this Plaintiff's Exhibit 12, the list that you had made up for me up until October 3, did not terminate. Have you had expenses for cleaning your apartment since then?

A I have to have somebody clean it, yes.

Q This list indicates that you were paying $15.00 per day for those days --

MR. McMAHON: Objection. The list speaks for itself, as long as it is in evidence.

MR. COUSINS: I will withdraw it and rephrase the question.

Q Will you tell us what you are presently paying today to have your apartment cleaned?

A Today?

Q Between October 3 and today, what have you been paying?

A I have to pay $15.00. She comes at nine o'clock in the morning and goes home at 2:00.

Q How many times a week does she come?

A Twice.

Q You have been paying those expenses since October 3 up until the present time?

A Yes, unless I am away.

Q I think you said that's twice a week?

A Yes.

Q On occasion did you also see in addition to Dr. Papas, Dr. T. Kaye of Alexandria, Virginia?

A Yes.

Q Specifically for this accident?

A Yes. I wanted another opinion.

Q Did he examine you and take X-rays?

A He took one X-ray -- yes, he took X-rays.

Q Did he give you a bill?

A Yes.

Q Is this that bill?

A Yes.

Q Has that bill been paid?

A Yes.

MR. COUSINS: Your Honor, I offer this in evidence.

MR. McMAHON: If the doctor is coming here, I have no objection. If not, I do object.

MR. COUSINS: I am not bringing the doctor up for this bill. You object to this?

MR. McMAHON: I tell you what we will do: Let's put his report in with the bill, all right?

MR. COUSINS: I have no objection.

(Plaintiff's Exhibit 13 and 14 received in evidence.)

MR. COUSINS: Plaintiff's Exhibit 13 is the bill from Dr. Kaye which totals $52.00 including X-rays and examinations and an office visit.

The report which is now in evidence, Plaintiff's Exhibit 14, is headed "Northern Virginia Orthopedic and Allied Speciality Clinic, Inc." A medical report by Dr. T. Kaye, M.D. It says, "Report on Monroe, Elizabeth, C.," and her sister's address in Arlington.

Q Wayne Street, is that where your sister lives?

A At that time, not now. She moved.

MR. COUSINS: "Date of examination, August 4, 1975. Prognosis report: Mrs. Monroe was injured when she attempted to return here approximately four months ago for an appointment. Her foot was caught in an escalator that for some reason or other reversed itself, that is as it was going downward it suddenly stopped and started going backwards for a few seconds. She suffered an injury to her ankle and states that she broke two bones. She states she was in a long leg cast. She is ambulatory now with a walker. Examination reveals that there is swelling of the right ankle and foot and there is evidence of discoloration in both areas. Ranges of motions in the ankle are 75% of the expected normal. X-rays of the right ankle show that there was a trimalleolar fracture and I imagine at the time of the injury there was probably a dislocation requiring the

immediate treatment that she received.

The diagnosis is that of a well healed trimalleolar fracture with probable fibrous union of the medial malleolus. The patient was asked to advance herself now to a cane, use heat and discontinue the walker. She was given injections of xylocaine and aristocord into both knees. She will be seen on a P.R.N. basis."

Counsel, will you s pulate that that means as required or as needed?

MR. McMAHON: Yes.

Q Mrs. Monroe, who did your laundry prior to your accident?

A I did.

Q You did it all yourself?

A Yes.

Q Since your accident, who has been doing it?

A My daughter.

Q Was there a period of time when your daughters were not around that it was being sent out?

A Yes, it had to be.

Q Very specifically, can you tell us what these bills are and what they were for?

A This was for laundry. This other one was for laundry. These are all my washables.

Q Were these for things that you did yourself before your accident?

A Yes.

Q Tell us why you sent your laundry out, why you incurred these bills?

A I couldn't do it and my daughter worked.

MR. COUSINS: Your Honor, I respectfully offer these in evidence. During lunch I will be happy to make up a schedule because they are very voluminous

MR. McMAHON: You bet your life.

MR. COUSINS: I tend to agree.

MR. McMAHON: Objection. Maybe you can show it to the Judge first.

MR. COUSINS: Come on. I couldn't really care.

THE COURT: Ladies and gentlemen, will you take five minutes, please.

(Jury not present)

THE COURT: Mr.McMahon, I want you to modulate your voice. I want you to stop these nasty, snarling tones, both to your adversary and to me, and I want you to behave in a civil and decorous manner. I don't know what is bugging you today, but you are not to bug anybody else. If you have a problem, whether it is

discomfort, ill health or anything else, you may tell it to me and I will treat it sympathetically, but I don't want one more . . . out of you during the remainder of this trial. Please remember that.

If you adversary makes a mistake or if I make a mistake, that's part of the tribulations of your job. We will all try to behave. I don't know what this piece of paper is, but whatever it is, it doesn't require that outburst from you addressing your adversary, "You bet your life"in the tone that you employed, and I don't want that to go on in my courtroom ever again.

Remove that from the exhibit and mark the rest in evidence and take three more minutes while we call composure to ourselves, and then we will proceed.

MR. McMAHON: Excuse me, Judge, I think I ought to state for the record that that is a Salvation Army donatin --

THE COURT: I don't care if it is a check for a short beer. I don't want that kind of talk in front of any jury in this courthouse, and I have sat here while you snarled at me, because that is quite bearable, but I don't want anymore snarling at me or Mr. Cousins or anybody else.

You are an experienced attorney, and I

expect the benefit of your experience for the remainder of this short trial.

MR.McMAHON: Your Honor, I was not aware that I was snarling at you.

THE COURT: That's why I had the jury go out. Because if I thought you were aware, I would give you these instructions in the jury's presence.

MR. MCMAHON: I would deserve them.

THE COURT: I am aware, and in ten-and-a-half years on this court, I have not more than two or three times had to stop a trial for this kind of purpose, and I know that you have been around, that's why I suggested the possibility that you are not feeling well, or something like that, but you are shaking your head so it is not that, and it is not for me to psychoanalyze you. It is for me to run this trial, and that's what I am doing.

Take another couple of minutes for a drink of water and then let's proceed.

(Recess)

(Jury present)

BY MR. COUSINS:

Q Mrs. Monroe, will you tell us what this is?

A This is for my medicine.

MR. COUSINS: In the upper right-hand corner is the number 214963, Korvettes' pharmacy.

Q This is what?

A 9D95S.

Q This is for what?

A For my medicine for my foot.

Q From the accident?

A Yes.

MR. COUSINS: Your Honor, perhaps I will save time and offer them all at one time. I will just go through them quickly.

Q I have here a drug bill dated 6/27/75. Will you tell us what this is?

A That was from the French Hospital, the medicine Dr. Papas prescribed.

Q For the accident?

A For the accident.

Q Another one dated 5/16/75. What is this?

A That was the same thing.

Q In the hospital?

A In the hospital.

Q Drugs for the accident?

A Yes.

Q Korvettes' pharmacy number 21184. What is this?

A Twenty-five dollars --

Q What is it?

A Medication.

Q From the accident?

A From the accident.

Q Bill from Imperial Surgical Supply Company, invoice number C06322. What is it? Don't tell us the amount.

A For a wheelchair for one month.

Q Rented after the accident?

A Yes.

Q Bill, Imperial Surgical Supply Company, C06119. What is this?

A Another bill for another month of the wheelchair.

Q You have a check here drawn on your acoount number 196 payable to Bayside Ambulance Corporation. What's that for?

A That was for the ambulance to carry me up the steps at home.

Q You have a check here number 198 drawn on your account to Louise Ashmore. What's that for?

A That was for her transportation to help me.

Q You have a check here drawn on your account

number 199 to Louise Ashmore. What's that for?

A Another bill for the transportation.

Q You have a check here drawn on your account number 301 to Louise Ashmore.

A That's the same thing.

Q You have some airline tickets here and then you have a smear on this piece of paper; is that correct?

A That's right.

Q What was that for?

A She wrote it down as she paid for it and then I paid her.

Q What were the expenses for?

A Transportation to help me. On the airline tickets, she paid for the airline tickets and I paid her.

Q What is the purpose of the trip social or did it have to do with this accident?

A No. She had to come and take care of me.

MR. COUSINS: Your Honor, I offer these into evidence as a group as Plaintiff's Exhibit 16.

THE COURT: Show them to Counsel. Fifteen was received.

(Plaintiff's Exhibit 16 was received in evidence.)

Q Mrs. Monroe, in connection with this lawsuit

were you examined on behalf of the defendant, Penn Central by a Dr. Peter Cyrus Rizzo?

A Yes.

Q Were you also examined on behalf of the defendant by a Dr. Howard Malenzweig?

A Yes.

Q Did either of these --

MR. McMAHON: Excuse me. I have a motion to make, your Honor, outside the hearing of the jury, if I might.

(At the side bar)

MR. McMAHON: Judge, if you recall, last week I told the Court, I represented to the Court that Dr. Peter Cyrus Rizzo was being operated upon. I then said that I would take a split trial, and the answer to that was no, and your Honor directed me to obtain another doctor, which I did. I think it is highly unfair that now that Mr. Cousins has mentioned the fact that Mrs. Monroe has gone to see Dr. Rizzo from the Railroad -- it places me in a position of not being able to produce the doctor, having been directed to get another doctor, which I did do.

I respectfully move at this juncture, because of that inference, not being able to produce Dr.

unless your Honor makes a statement to the jury to the effect that Dr. Rizzo is in the hospital, a patient, is unavailable, in the alternative I have no choice but to move for a mistrial.

THE COURT: Why did you bring up Dr. Rizzo, for heaven's sake?

MR. COUSINS: I brought out both doctors.

THE COURT: I know you did. I will make the statement.

MR. COUSINS: I'd like to verify it over lunch. You didn't check with him before you reared back and said it. You should have told me about it. You were here last week too. If you felt a need to bring out both doctors, you should have talked to me about it. Now you brought it out, it ought to be corrected as Mr. McMahon wishes instantaneously. If you want to check up on him, you go ahead and do that.

I will make the correction, sir.

(In open court)

THE COURT: Let me just say a couple of words to you about the reason for our bench conferences, as you call it. In a case of this kind, a defendant will have a plaintiff, somebody making a claim, examined by a doctor. Mr. Cousins just mentioned that Mrs.Monroe made

herself available to be examined by two doctors, but the reason for that was that the first doctor, Dr. Rizzo, is, informed, and I accept it, He had to go to the hospital himself and couldn't come and testify at this trial. So under my direction, when the defendant through Mr. McMahon told me about this problem, it was arranged that the defendant could have a second examination of this Plaintiff.

It is only that second one that you will hear about because the second doctor is not available.

Does that cover the subject?

MR. McMAHON: Yes, sir. Thank you very much.

BY MR. COUSINS:

Q Were you in any way treated by Dr. Balenzweig or just examined for the purpose of this litigation?

A No. He took an X-ray.

Q He is not your treating doctor?

A No.

Q He didn't care for you?

A No.

MR. COUSINS: I have no further questions, your Honor.

CROSS EXAMINATION BY:

MR. McMAHON:

Q Mrs. Monroe, of course, you travel back and forth frequently to Washington, D.C., is that correct, or at least you did?

A Yes, I did.

Q When you go down there, for some reason or other, you visit a Dr. T. Kaye; is that correct?

A That's right.

Q You told us, I believe, when we took your deposition back in October of 1975 that you had no orthopedic problem, isn't that correct?

A That's right. I had spurs taken off by him.

Q Off your foot?

A Yes, but that was sometime before that.

Q But you had no problem with your knees or anything like that, or your legs generally?

A No, I don't.

Q You had no appointment, I take it, with Dr. Kaye when you were going to Washington on the 13th of April, 1975?

A I didn't have any before I left New York, no.

Q I am going to show you Plaintiff's Exhibit 14 which is in evidence, and it has already been read to

the jury. I am going to ask you whether or not -- to read the first three lines and ask you whether or not that refreshes your recollection to the fact that you had an appointment with Dr. Kaye at least the week of April 13 or 14, 1975?

Just look at it and read it.

A 1975 is that?

Q '75. Just read the first three lines there.

(Pause)

A What do you want?

Q Does that refresh your recollection as to whether or not you had an appointment with Dr. Kaye at least the week of April 13 and 14, 1975?

Just yes or no.

A Yes.

Q Did you have an appointment with Dr. Kaye?

A Yes.

Q Dr. Kaye is an orthopedist, isn't that correct?

A A specialist.

Q And these spurs that you tell us about were ten years before, isn't that correct?

A One of them was.

Q Which foot was that on?

A That was on the left foot.

Q And the right foot?

A Was not operated on at that time.

Q Has it been operated on subsequently?

A It was operated on later, just to take the spur off so I could wear shoes. It always cut me right where my bump comes.

Q How much after was that?

A Just little spurs. Oh, I can't remember.

Q A year after the first one? Six months?

A No, it was later.

Q Two years?

A Yes, probably.

Q One was ten years and one was eight years ago; is that correct?

A That's right.

Q When you finally got to Dr. Kaye, that is on August 4, 1975, August 4, 1975, he examined your knees, did he not?

A Yes.

Q As a matter of fact, he gave you injections into both knees, isn't that correct?

A That's right.

Q Had he been treating your knees?

A Just the one.

Q No, he examined --

A He treated them later on. He had them treat --

Q I am talking about August 4, 1975. Did he render some treatment to both knees?

A Yes.

Q The last time you saw Dr. Kaye prior to August 4, 1975, when was that?

A When do you mean, before that?

Q Before the accident.

A I can't remember.

Q Did he treat your knees on that occasion?

A Yes.

Q For how long a period of time had he been treating your knees?

A Oh, not too long.

Q A year? Two years? Three years? Four years? Five years?

A Oh, no, it is only about two years.

Q I am going to show you a portion of the hospital record which is Plaintiff's Exhibit 11 -- which I better mark for identification.

MR. COUSINS: It is in evidence.

MR. McMAHON: I want to mark this sheet.

THE COURT: All right.

(Defendant's Exhibit B was marked for identification.)

THE COURT: Defendant's Exhibit B is a page from an exhibit already in evidence?

MR. McMAHON: Yes, sir.

Q Mrs. Monroe, when you got to the hospital, and without benefit of anybody from the railroad around or anybody else --

MR. COUSINS: Objection to the form of that, your Honor.

THE COURT: Why don't you rephrase it.

MR. McMAHON: I will rephrase it.

Q When you got to the hospital and into the emergency room, did they take a history from you?

A Yes. The policeman had the history.

Q Was the policeman with you?

A No. That was sent to the hospital. The hospital asked me what happened, yes.

Q When you got to the hospital, the hospital personnel, did they ask you what happened?

A They --

Q Just yes or no. Did they ask you what happened

A Yes.

Q Did you tell them what happened?

A No. They read it off the policeman's record.

Q Oh?

A Yes.

Q You didn't tell them what happened at all?

A Just that I was caught in an escalator. That wasall I said.

Q Did you tell anybody connected with that hospital at any time what happened to you on the escalator?

A In the emergency room?

Q Or any other time?

A No.

Q Did you tell them that you fell on the escalator?

A I didn't fall. The man held me up.

Q This bag that you were carrying, that was, what, anAmerican touristor, was it?

A Yes.

Q A twenty-one inch bag?

A Yes.

Q An overnight bag; is that correct?

A Overnight bag, yes.

Q When you got on the escalator, it was moving downward?

A Yes.

Q Before you got on the escalator, was it moving at all?

A No. I didn't see it moving. He turned it --

Q You didn't see it moving?

A No. He turned it on.

Q Who was that, the usher?

A Yes.

Q You were waiting at the top of the escalator for him to turn it on?

A Yes.

Q You were the first one on the escalator?

A Yes.

Q Was there someone immediately behind you on the escalator?

A I imagine the passengers just followed because we were all standing there waiting to go on the train.

Q When you went down, did you feel somebody's

presence immediately behind you?

A Oh, yes, there were people.

Q Pushing you?

A No, they weren't pushing. They were all on.

Q When this escalator came down -- was going down, you told us that in some way -- and I am talking about the steps now-- the steps stopped and reversed themselves?

A I couldn't say that, but I looked over and saw my hand going back.

Q Can you answer this yes or no: Did the steps at any time reverse themselves? Just yes or no?

A I don't know.

Q But you say the handrail started going back?

A I saw my hand going back, I saw my hand -- I thought they were reversing it.

Q When you saw it going back, did you release your hand?

A No. I held on tight and I thought,"Well, I will hold on. I guess they are turning it around."

Q Then I think you told us that somebody grabbed you from behind and said, "I won't let you fall.?"

A That's right.

Q Did they hold you up straight?

A Yes. He said, Straighten up."

Q He held you up straight?

A I thought I was standing up straight but --

Q I don't want to argue with you. Will you answer my questions, if you can, please, Miss Monroe?

MR. COUSINS: Your Honor, I object.

THE COURT: Yes. I think she is trying to answer.

MR. McMAHON: I couldn't understand it.

THE COURT: Finish your answer.

A (Continuing) -- When my hand was going back, I thought it was pulling me back.

Q Did you let go of it --

A No, I held on.

Q What I asked you was, these two people or one person behind you, they held you up?

A The man said, I will hold you, don't panic, and I will straighten you up."

Q Did they hold you up?

A Yes.

Q When they held you up, did somebody shout to have the escalator stopped?

A I heard a clicking and he hollered, "Stop."

Q Who hollered stop, the man behind you hollered stop?

A I heard a loud voice.

Q Then the escalator came to a stop?

A Yes.

Q Would you say that you were steady on an escalator generally or are you always afraid of falling?

A I am never afraid of falling, no. I have never fell. But I always held on tight.

Q When you were examined in my office, if you recall, Mrs. Monroe, with Mr. Cousins present, under oath, page 11, line 13;

"Question: And you had your left hand where? Answer: On the railing of the escalator, held tight, because I was always afraid of falling."

Did you give that answer to that question? Just yes or no.

MR. COUSINS: I will concede it is there and it was given.

Q Just yes or no.

A I guess it is right.

Q We know that you told the officer that your foot got caught; is that correct? the patrolman?

A Yes.

Q Where was your foot caught?

A Well, it was caught on this side.

Q The right foot.

A It is the right foot and it was caught here.

Q Caught where? On the inside?

A On the -- the right at the ankle.

Q Yes, but where? I think your attorney said you had a bruise on your ankle on the inside?

A Yes. It was caught there.

Q On the inside?

A Yes.

Q Would you tell us where your foot was caught?

A In the back of the step.

Q You mean your right foot, you turned around--

A When the railing went back, I was pulled this way and that is when my foot was caught.

Q I am trying to find out on what part of the step the foot was caught.

A In the back.

Q It was caught and it had to be released?

A Yes.

Q Where on the step, on the rise or on the side?

A It was underneath, I guess. No, it was caught

underneath the step and he released me. My stocking tore.

Q I am trying to clarify this for myself, for his Honor and for the jury. Could you tell us where on the step? Was it on the rise of the step, the side of the step or the flat of the step?

A No, I think it was back here, like just about like when I was pulled aside, my foot went back against the step, and I think it was caught right down there.

Q What about your left foot?

A The shoe was knocked off my left foot and I was standing there with my stocking on.

Q What you are telling us is that the side of your foot, that's what --

A Yes. The railing pulled me back. The railing pulled me back.like this.

Q What happened to your left foot when all this was going on?

A I was holding on, and my shoe was knocked off. It was bumped up against the elevator.

Q The left foot or the right foot?

A The left foot the shoe was off.

Q Where was that left foot when your right foot was caught?

A Standing near the escalator.

Q Where was it, on the step

A On the step, yes. I was standing up.

Q Straight down or what?

A Yes.

Q And the right foot was inserted?

A Yes.

Q Mrs. Monroe, is it your testimony now that the escalator stopped and then it reversed and went back up?

A I thought it was going back up when I saw my hand going up.

Q Could I have a yes or no answer to that question? Is it your testimony now that the escalator stopped and started to go back up again?

MR. COUSINS: Objection, your Honor.

THE COURT: Sustained. She is telling you what she thought she perceived, which is the best she can do.

Q On page 19, line 12, did you give this answer to this question, under oath, on your deposition?

"Question: The escalator was descending and you say that when it was half-way down it reversed? Answer That's correct."

Did you give that answer to that question?

A Yes.

MR. COUSINS: I will concede that.

Q Down further:

"Question: Did your foot catch on the escalator? Answer: I don't know whether it caught or not. My stocking was torn and the man had to put it over, it was just dangling and it was broken."

Did you give that answer to that question?

A Will you read that again, please?

Q "Question: Did your foot catch on the escalator? Answer: I don't know whether it caught or not. My stocking was torn and the man had to put it over, it was just dangling, it was broken."

Yes or no?

A Yes.

Q "Question: I am asking you, did your foot get caught? Answer: That is the only way it could have gotten broken, I guess."

A I am sure of that.

Q "Question: Was it caught before it stopped or after it stopped? Answer: As it stopped."

Did you give that answer to that question?

MR. COUSINS: Yes.

Q Before you say the escalator stopped, did you notice any move. On the steps? Did you notice which way the steps were moving before the escalator stopped?

A I thought they were moving down, but when I saw my hand going back, I thought they reversed.

Q The steps reversed?

A I don't know whether -- thought they were going back again. It pulled me to the side.

Q Is it a fair statement to say, Mrs. Monroe, that your testimony is that the escalator, the entire escalator, the handrail and the steps, started to reverse?

A I don't know whether the steps reversed, but I know the handrail, when I looked over, the handrail was going back and that pulled me. But I can't say anything about the steps. I thought I was being taken back up again.

Q What concerns me is that these steps, as you know, open out; is that correct?

A Yes.

Q When you got on the steps, you had your overnight bag and yourpocketbook in one hand; is that right?

A That's right.

Q That was your right hand.

A That was my right hand.

Q And you were holding on with the left hand; is that correct?

A That's right.

Q You were in the middle of the steps?

A Yes.

Q When you tell us that you felt your arm going back and your body going back, a man held you up; is that correct?

A Yes, that's right.

Q At no time did you fall over?

A No.

Q This usher, did you see him at the top of the escalator?

A Yes.

Q You had a conversation with him; isn't that correct?

A Yes.

Q Beforehand?

A Yes.

Q You saw him reach down and do something with the key or a control of some sort, isn't that correct?

A Turn it on.

Q Then he turned around and he said to you, "It's all right for boarding?"

A No, he didn't turn around. He was still stooping down and he saw the steps going down, and he said, "Okay," and I got on the first one.

Q Did you notice any trainman at the bottom of the escalator?

A I wasn't looking down that way.

Q Pardon me?

A I wasn't looking down that way. I can't remember seeing anybody.

Q Did you observe the usher call down to anybody below at any time?

A No.

Q "Is the train ready," or anything like that?

A No, I didn't hear that.

Q When the train was called, you were sitting in the waiting room?

A No. I was standing right there at the gate. I asked him whether that train will soon go, what gate will it go on, and he said, "It will go on this gate. I am going to soon open it up."

Q You knew pretty much where the Washington trains leave from; is that correct?

A Yes, and he was the only usher I saw, so I asked him when it was going to --

Q You had been down there many times before, so that you knew generally this was going to be the track for the Washington or Amtrak train, isn't that correct, to Washington?

A Yes.

Q After you came out of the Horn & Hardart, you sat down in the waiting room, I take it?

A Yes. For about an hour.

Q Then you got up and you went at about a quarter of ten to this gate?

A I went over and I asked him.

Q He said, "This is the gate," right?

A "Wait. I am going to soon open up."

Q Were there any people around the gate at the time you went over or were you the only one?

A They were all standing around but I didn't know if that was the gate they were going to leave us down, so I asked him.

Q Were there other people at the top of that gate when you got there?

A Yes, yes.

Q Did they get on the escalator with you or

behind you, if you know?

A Behind me.

Q Were you the first one on line for this escalator?

A I was.

Q When this accident happened -- incidentally, did the railing stop?

A It didn't stop until a man hollered, "Hold it." I heard a click, I heard sort of a clicking sound, and he said, "Hold it." I heard a man's voice holler, "Hold it."

Q Incidentally, when you had your deposition in 1975, you didn't mention to me anything about a clicking that you heard, did you?

Just yes or no?

A No.

Q Since that time, of course, you talked this case over with your lawyers many times; isn't that correct?

A He told me just to tell the truth, what happened.

Q Of course. And he told you what the railroad people said, didn't he?

A He didn't say anything about that.

Q You mean you never went over your testimony at

all with him?

A Not that, no.

Q Not the clicking?

A No.

MR. COUSINS: Her testimony or the railroad's testimony?

THE COURT: I think the question was clear. Go ahead.

Q Did he go over with you Mr. Cadogan's deposition?

A No. He asked me how it happened?

Q Just yes or no.

A No.

Q He didn't? He didn't tell you about -- when did you first suggest to him, Mr. Cousins, that there was clicking on the escalator? When?

A When I saw my hand --

Q When did you first suggest to Mr. Cousins --

THE COURT: Let her finish her answer.

A I didn't tell him anything about that.

Q Did Mr. Cousins ever discuss with you the fact that the usher testified on deposition that if he heard clicking on the escalator, he would shut it down?

A No, he didn't say anything about that.

Q When I refer to the escalator, you and I realize that I am referring to the steps and the railing, isn't that correct, Mrs. Monroe?

A Right.

Q What you are saying is that what caused you to get hurt was because the escalator stopped? Just yes or no, if you can.

A My hand was going back. That's when I knew something was wrong.

Q Was the escalator reversing?

A Yes.

Q Both the steps and the handrail?

A I can't --

Q Just yes or no.

MR. COUSINS: Objection, your Honor.

THE COURT: Yes. Don't keep pressing for yes or no. Let her answer in her own way.

A I only saw my hand going back. Then is when I thought I was going reversed. I don't know whether the steps were reversed, but I was being pulled.

Q I am going to read some questions to you from the deposition which you gave under oath, page 18, line 4.

"Question: And that is what you are saying

caused you to get hurt, because the escalator stopped? Answer: No, It went back. It reversed and was coming up. It reversed and was coming back."

Did you give that answer to that question? Just yes or no.

MR. COUSINS: I will concede it.

Q Yes or no.

A I saw my hand, yes.

Q "Yes," all right. "Yes."

"Question: How far did it reverse and go backwards? Answer: About a foot and a half."

Is that correct?

A That's correct.

Q "Question: With the railing? Answer: With the railing, yes. When this man said, "I'll hold you."

A That's right. "I will straighten you up," he said. "Don't panic."

Q When I mentioned to you with the railing, you realize I was referring to the escalator, the steps and the railing, isn't that correct? Isn't that right?

A Well, I don't know.

Q When you refer to the steps as descending, the steps descending and ascending a foot and a half --

A Yes, my hand.

Q I am just talking about the steps now. Never mind your hand, if I may. Ascending, what you meant was, on deposition, that the steps were going down and then suddenly came back a foot and half; is that correct?

A No.

Q Did the escalator stop, the steps on the escalator stop, before there was any hollering?

A No. They hollered first, "Hold it."

Q You say that you were hurt and injured as the escalator stopped?

A Yes.

Q And your foot was caught as the escalator stopped?

A Yes.

Q Prior to this time and for many years you were under the care of Dr. Kaye in Alexandria, Virginia?

A Not for many years. Iwas there from time to time.

Q He handled your orthopedic problems with your knees; isn't that correct?

A Yes. For arthritis.

Q How long a period of time did you have an orthopedic problem with your knees? How many years?

MR. COUSINS: She said arthritis. That's hardly orthopedic.

THE COURT: I don't know. In any event, you are referring to the arthritis.

Q In your knees?

THE COURT: How long have you been treated for the arthritis?

THE WITNESS: Not long.

THE COURT: How long?

THE WITNESS: I can't remember.

MR. McMAHON: I have no further questions.

REDIRECT EXAMINATION BY

MR. COUSINS:

Q Mrs. Monroe, on April 13, 1975, the date the accident occurred, when you left your home, had you made any appointment to see Dr. Kaye in Virginia on that trip?

A On that trip?

Q Yes.

A I don't remember.

Q Standing on the escalator before the railing started reversing, did you have any problems with your knees?

A No.

Q Did they lock on you, or anything?

A No.

Q Had you ever fallen previously? Had your knee ever given way?

A No.

Q When you received the injections in your knees, that was August 4th of 1975, was it not?

A I guess so.

Q When you saw Dr. Kaye?

A Yes.

Q That was four months after the accident, was it not?

A Yes, because I was there to see Dr. Kaye. I wanted to have another opinion of my ankle.

Q When you were there did he also examine your knees and check up on your arthritis?

A Yes.

Q So you had some arthritis before this accident ever occurred, didn't you?

A Not in my ankles.

Q I am talking about in your knees.

A No, well, shortly -- yes.

Q Incidentally, at your deposition, were you ever asked any questions about whether you heard any

clicking sound?

A No.

Q At your deposition, were you answering those questions that you were asked?

A Would you repeat that?

Q At your deposition when you were giving answers, that was in response to the questions that you were asked, were they not?

A I don't remember.

Q At your deposition you were asked certain question?

A Yes.

Q And you answered those questions, didn't you?

A Yes.

Q Mr. McMahon read some questions to you from your deposition, and I'd like to ask you if you gave in context these other answers to these questions, beginning on page 14, line 6.

"Question: After you got on the escalator? Answer: I was going down.

"Question: The railing was going down and the steps were going down? Answer: Everything was working fine."

Do you remember giving those answers?

A Yes.

Q Then he asked:

"Question: How far did you get on the escalator before something happened? Half way down, a quarter way down? Answer: A little more than half way down.

"Question: When you were half way down, what happened to your feet? Answer: Nothing. I was standing still. I looked at my hand and my hand was going back. The railing was going back. I never let go of the railing."

Is that your answer?

A That's right.

Q "Question: The railing started to go back? Answer: Yes.

"Question: And when the railing started to go back, what did you do? Answer: I stood still because I couldn't move. My foot was hurt by that time."

Did you give that answer?

A Yes.

Q "Question: What did you do, you stood still? Answer: And I held on too.

"Question: To what? Answer: The railing, and my pocketbook too, and my suitcase. I never budged.

"Question: You said the railing went up about a foot and a half the other way? Answer: Yes.

"Question: And you held on to the railing? Answer: Yes.

"Question: When the railing was going up one way, was the escalator going down the other way? Answer: No, it stopped. It stopped after my hand moved back about a foot and a half.

"Question: After the railing went up about a foot and a half? Answer: Yes. I kept on holding on to it, on the railing, and I saw it moving backwards.

"Question: When the railing was moving backwards were the stairways moving down or backwards? Answer: They had stopped then.

"Question: What happened first, the railing moving backwards or the stairway stopping? Answer: Well, now, I think the railing moved back and I noticed it moving back and I was leaning back. I was going back and the man said, "I will straighten you up," in the back of me. By that time everything stopped there, the steps and the railing stopped. It just moved my hand back about a foot and a half."

Is that what you testified to?

A Yes, and pulled me over.

Q On page 17, were you asked these questions and did you give these answers, line 15.

"Question: Did they carry you up the escalator steps? Answer: Yes.

"Question: The time they carried you up the escalator steps, the escalator was stopped? Answer: It was stopped when I got hurt."

A That's right.

Q "Question: Your testimony is that when it was half way down, that is when it stopped, is that right? When you got hurt? Answer: When I got hurt.

"Question: How far did it reverse and go backwards? Answer: About a foot and a half.

"Question: You said it reversed? Answer: Then it stopped. They closed it up. They carried me up those steps."

Page 19, did you give these answers to the following questions;

"Question: The escalator was descending and when you say that when it was half way down it reversed? Answer: That's correct.

"Question: Was it stopped for any period of time before it reversed? Answer: No, I didn't notice it. I just noticed my hand going back and then it

stopped.

Did you give those answers?

A Right.

Q "Question: Did your foot catch on the escalator? Answer: I don't know whether it caught or not. My stocking was torn and the man had to put it over, it was just dangling, it was broken."

Bottom of page 19:

"Question: I am asking you, did your foot get caught? Answer: That is the only way it could have gotten broken, I guess.

"Question: Was it broken before it stopped or after it stopped? Answer: As it stopped."

Did you give that answer?

A That's right.

Q "Question: I ask you again, Mrs. Monroe, was your foot caught before the escalator stopped? Answer: No.

"Question: Was it caught after the escalator stopped? Answer: The man got it loose."

Is that true?

A That's true.

Q Continuing your answer: "I didn't know that it was caught until a man said, "I'll need help here" when

he was going to take my suitcase.

"Question: That is when you discovered that it was caught? Answer: Yes, I was hit bad."

Should that be "hurt bad?"

A Yes, hurt bad.

Q "My ankle was broken in three places."

Did you give all those answers to those questions?

A Yes.

MR. COUSINS: That is all.

RECROSS EXAMINATION BY

MR. McMAHON:

Q Do you have a family doctor?

A Yes.

Q Who is that?

A Dr. Fishman.

Q How long have you been under Dr. Fishman's care, for any reason, colds or so on?

A You mean with the accident?

Q No. Before that, generally, for colds, you know, things like that?

A I lived here nineteen years and I had him then for a cold. Then when I came back --

Q When did you first meet Dr. Fishman?

A About nineteen years ago.

Q He is in Bayside?

A No, Jamaica.

Q Do you go to him on occasion, to his office?

A Yes, when --

Q He prescribes for you, does he?

A The same medicine that Dr. Papas prescribed.

Q He prescribes for you, does he?

A Yes.

Q Does he take care of your arthritis condition generally?

A No, I don't take medicine for arthritis.

Q You take shot in the knees for the arthritis; is that correct?

A That was June 1. That was when that hurt me at that time, but that stopped. I don't take medicine for -- any medicine at all.

Q Incidentally, when you were in my office at the time of the deposition, were you using a cane?

A No. Wait, for the deposition?

Q I didn't recall you having any cane or anything, or crutches. Were you using a cane in October of 1975?

A Yes --

Q Were you in my office?

A Yes.

Q Do you have it with you?

A I had it ever since the accident. I didn't use a cane before the accident.

Q Pardon me?

A I didn't use anything before the accident.

Q Incidentally, let me get this straight now. You go to Dr. Kaye before the accident and you go to Dr. Fishman in Jamaica --

A Not often.

Q Before the accident. Do you go to any other doctors?

A No.

Q Dr. Papas?

A Dr. Papas, only since the accident.

Q When was the last time you saw Dr. Papas?

A When he discharged me -- when I had the X-ray taken or the cast taken off. I couldn't get back in --

Q What month was that that you last saw Dr. Papas as in 1975? August.

A It was in the cast twelve weeks.

Q August, 1975?

A Yes, I guess it was. I wouldn't --

Q Dr. Papas advised that you come into his office and follow him after that and go to see him after that? Just yes or no.

A He gave me instructions, and I could call him at his office

Q But you never saw Dr. Papas again; is that correct?

A I called twice.

Q You never saw Dr. Papas again; is that correct?

A No, I couldn't get in.

Q Between last seeing Dr. Papas and then going all the way down to Washington, D.C. to see Dr. Kaye, did you see any other doctor?

A No.

Q Between the time you saw Dr. Kaye and the time October, 1975 when your deposition was taken, did you see any doctor?

A I see Dr. Fishman to get medicine.

Q Did you see any doctor at all between October 9, 1975 and the visit to Dr. Kaye?

A Dr. Fishman, yes.

Q When did you see him?

A Last month.

Q No, no. I am talking about 1975.

A Oh.

Q Between the time you came to my office for a deposition with Mr. Cousins and the time that you saw Dr. Kaye in Washington, D.C --

THE COURT: Wait. Isn't that backwards, no?

MR. McMAHON: It is.

THE COURT: Why don't you do it frontwards?

Q Between the time you saw Dr. Kaye in Washington, D. C. in August, August 4, to be exact, and the time you appeared for deposition in my office on October 9, 1975, did you see any doctor at all?

A I don't remember, because I --

Q If I could refresh your recollection --

A I carry Dr. Papas' instructions out.

Q Excuse me.

THE COURT: Mrs. Monroe, just answer the question. If you don't remember, say so.

THE WITNESS: I don't remember.

Q Do you remember telling me on your deposition you had not seen a doctor?

MR. COUSINS: Objection to the form. May we have a page and line?

THE COURT: Sustained.

Q Did you last see Dr. Papas on July 13, 1975?

A I don't remember what da it was.

Q Page 29"

"Question: Let's count out twelve weeks. We will make it three months. This happened on April 13, so it is May, June, July. Answer: Yes.

"Question: July 13. Answer: All right.

"Question: July 13. After July 13 or thereabouts, did you see Dr. Papas, just see him, and just answer yes or no? Answer: No. I didn't see him."

A No, I didn't see him.

Q Dr. Papas is an orthopedic man, isn't that correct?

A That's right.

Q Dr. Fishman I take it is a general practitioner?

A That's right.

Q Dr. Kaye is an orthopedic man?

A Specialist.

Q Did you see any orthopedic man at all other than examinations at my request from the time that you saw Dr. Papas until today?

A You sent me, didn't you, to --

Q Except for what I requested. From the time you saw Dr. Papas and Dr. Kaye, have you had any treatment at all by an orthopedic man?

A No.

Q Have you seen Dr. Kaye since August 4, 1975?

A No.

MR. McMAHON: I have no further questions.

MR. COUSINS: I just have three based exactly on what Mr. McMahon asked. I won't go into anything repetitious.

FURTHER REDIRECT EXAMINATION

BY MR. COUSINS:

Q When you saw Dr. Papas after you were discharges from French Hospital, where did you go to see him?

A To the French Hospital. Always to the French Hospital.

Q Was that still between 29th and 30th Streets in Manhattan?

A Yes.

Q At the time where were you coming from? Where were you living?

A Bayside.

Q You had to travel from Bayside all the way

in Queens. into Manhattan to see him on West 30th Street?

A Yes.

Q Did you at any time make that trip, have an appointment, get to the hospital and then find out that he wasn't there?

A Yes.

Q When you made these trips to come see him, did you come by yourself?

A No. I had to be brought.

MR. COUSINS: Nothing further.

Thank you very much.

FURTHER RECROSS EXAMINATION

BY MR. McMAHON:

Q Did you have an appointment with Dr. Papas at any time after you got discharged from the hospital?

A Yes. I carried all his instructions out.

Q Do you have an appointment with him?

A Yes.

Q When was the first appointment?

A A few weeks after I was discharged, I had to go back.

Q In his office or in French Hospital?

A In French Hospital he always saw me. He took half of my cast off then. Then I had to go back again, and he disappointed me, he wasn't there.

Q When was that?

A About three weeks after that.

Q Was that in August?

A I would have to count it up. I'd have to see the --

Q Did you get another doctor then?

A No, I didn't get another doctor. I waited -- I called him. He said, "Come next week, " so I was twelve weeks in the cast.

MR. MCMAHON: I have nothing else.

THE COURT: Thank you, Mrs. Monroe.

(Witness excused)

MR. COUSINS: Your Honor, at this time the plaintiff, with the Court's permission calls Mrs. Serafini to the stand, please.

M A R Y S E R A F I N I, called as a witness by the plaintiff, having first been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. COUSINS:

Q Mrs. Sefafini, are you related to the plaintiff

in this case, Mrs. Elizabeth Monroe?

A She is my mother.

Q Do you live with your mother?

A In the same house.

Q How is that house broken up?

A She has the apartment on the first floor, I have the apartment on the second floor.

Q At the time of this accident were you employed?

A Yes.

Q In what capacity and where?

A I am a teacher, I was a teacher in Great Neck.

Q Did you receive a phonecall on April 13, 1975, advising you that your mother had been involved in an accident?

A Yes. Patrolman Sova called me.

Q Keep your voice up. You are doing fine. Just keep your voice up.

A About ten minutes after ten on Sunday morning.

Q Ten minutes after ten? This is a.m., Sunday morning?

A Yes.

Q What did he tell you?

A He told me my mother was injured and that he would call me back and tell me which hospital she was going to be taken to, and I said I would be in immediately if he could tell me where to come.

Q Did he do that?

A Yes.

Q Did you then go to French Hospital?

A Yes.

Q Did you see your mother there?

A Yes. I think we got there about the same time.

Q Did you go to emergency room where your mother was?

A Yes.

Q Did you observe your mother?

A Yes.

Q Will you please tell us what you observed.

A She was very white and very ill-looking, and the ankle was in terrible condition. It was a ghastly sight, I thought.

Q It was what, I'm sorry?

A I said it was a ghastly sight. The first question I asked the doctor was, "Will she ever walk again,"

and he said --

MR. McMAHON: Objection.

THE COURT: Yes. Sustained. The jury will disregard that. Just confine yourself, please, to answering the questions. Next question.

Q Could you describe the appearance of your mother's right ankle and foot?

A It was bleeding, the inside of the ankle was bleeding, and the foot was turned completely away from the leg part. You understand what I mean?

Q Yes.

A It was badly dislocated and it, I presumed, was broken badly.

Q Did you observe any of the procedure or things that were done for your mother in the emergency room?

A They gave her I think a pill first to quiet her and asked her to lie back, and then when they were going to set it the first time, I went out of the room.

Q Did you continue to visit your mother on an-almost-daily-basis throughout her hospital stay?

A Everyday. I went in after school. Everyday.

Q Prior to your mother's injury, did you help her out with the running of your own home?

A Oh, no. I didn't have time. I had a full-time job and I have my own home to take care of. My mother was very independent. She would go away whenever she wished to, go visiting or take a trip, and she did all of her own housework. She did even much for me, you know, because I was working.

Q Following the accident, for example, when your mother went to -- after her discharge from French Hospital she saw Dr. Papas; did you render any assistance to her in taking her to and from medical treatment?

A I had to. She couldn't possibly move without being taken. She was really --

THE COURT: Miss Serafini, we will get done more quickly if you just answer the questions. The answer to that question, for example, was yes.

Next question.

Q We want to move along a little expeditiously. When your mother went to her depositions in connection with this case, did you render any assistance?

A Yes.

Q Did you take her to and from the depositions?

A Yes.

Q In connection with the trial that's going on

now, do you take your mother to and from?

A Yes.

Q Have you assisted your mother almost continuously since this accident?

A Yes.

Q Have other members of the family also helped out ?

A Yes.

Q Are you presently working?

A No.

Q Will you tell us why not?

MR. McMAHON: Objection.

MR. COUSINS: I believe the Court will find it relevant.

THE COURT: What's the ground of the objection?

MR. McMAHON: I don't know what she did beforehand --

THE COURT: She said what she did beforehand.

MR. McMAHON: I withdraw the objection.

Q Will you tell us why you are not presently working?

A I retired.

Q Will you tell us why, specifically?

A It was difficult for me to have members of the family come and take care of my mother, and I felt that it was -- since I was of retirement age, it would be better for me to retire and be in the house myself and take care of her. It was easier that way. Then I wouldn't have to make so many arrangements for people to come and then be disappointed that they couldn't get there.

Q On the day of the accident after you had been with your mother that day, did you go to Penn Station that evening?

A Yes.

Q For what purpose did you go?

A To thank Patrolman Sova for calling me because --

Q That's okay. We understand why you would thank him. He called twice and he gave you information pertaining to your mother, correct?

A That's right.

Q When you went to Penn Station, where did you go in the station first?

A Well, we passed through the station and I asked where the security office was, and they directed me,

and I went there.

Q Was Patrolman Sova there?

A He had just left.

Q Did you speak to anyone else on the police force?

A His superior.

Q Who was that?

A Lieutenant Rockefeller.

Q Did you tell him -- just to cut it very quickly -- did you tell him the message you had wanted to give to Mr. Sova?

A Yes.

Q While you were there did you have occasion to go to the area where your mother's accident had occurred?

A I passed by.

Q How did you know that was the area where the accident had occurred?

A We discussed it at the hospital and I knew, she had told me the number of the platform, and I mentioned to my husband that itwwas dark, and I said, "You see, it is closed, they are not using it."

Q When you went -- you sort of anticipated my next question, but that's all right. When you went to

the escalator, tell us what you observed? First of all, what time was this, approximately?

THE COURT: Wait just a second.

(At the side bar)

THE COURT: What are you about to elicit?

MR. COUSINS: Just that it was shut down and closed off, and they only do that, if you recall the testimony, they are always left running unless they are shut down for a malfunction. When she went there it was shut down .

THE COURT: Do you object to that?

MR. MCMAHON: No, because I want to cross examine her on it. I don't.

(In open court)

Q Approximately what time was it when you arrived at the area where the accident had occurred?

A I'd say about 5:30.

Q P.M?

A P.M.

Q Will you tell us what you observed and saw at the escalator, at the gate?

A It was dark. The escalator was not running, and,that was all.

MR. COUSINS: I have nothing further.

Thank you very much, your Honor.

CROSS EXAMINATION BY

MR. McMAHON:

Q Were there any barriers in front of the escalator?

A I don't remember that.

Q By the way, I took your deposition also, if you recall?

A That's right.

Q Did you give this answer to this question on November 3, 1975, page 6:

"Question: Were there any barriers in front of the escalator? Answer: None that I saw."

Was that the truth when you gave it?

A When I gave it, yes. I thought about that since.

Q I am sure that you did. Then when you had this conversation with respect to the escalator with whoever was in the security office, did you ask him about the escalator?

A Yes.

Q Did this man that you asked about the escalator tell you it was shut down for the day?

A I think he did say --

Q Did he tell you that it was shut down for the day?

A I think he did say that.

Q Then did you ask him was there anything particularly wrong with the escalator? Did you ask him that question?

A Well, our conversation --

Q Let me refresh your recollection, on page 9:

"Question: Well, let me ask you this: Did he say there was anything particularly wrong with the escalator? Answer: I asked him what had happened, and he said they had somebody come to inspect it and it was all right as far as he was concerned."

A That's right. That's what he said.

Q Is that what he told you?

A That's what he said.

Q That's what you asked him; is that correct?

A That's right.

Q Also on the day of the accident I believe one of the foremost things in mind was that you wanted to put a claim in; is that correct? Just yes or no. Did you tell him you wanted to put a claim in?

MR. COUSINS: Objection. Those are two

different questions.

Q Did you tell him you wanted to put a claim in? Yes or no.

A Yes. Not quite like that.

MR. McMAHON: I have no further questions.

REDIRECT EXAMINATIONS

BY MR. COUSINS:

Q Mrs. Serafini, in fact, was the exact discussion testified to by you under oath at your deposition with Lieutenant Rockefeller at the -- the police officer for Penn Central, page 10, were you asked the following questions and did you give the following answers:

"Q Did the supervisor say anything --

MR. McMAHON: Objection. Leading.

THE COURT: He is reading her the questions and answers. What's the ground of your objection?

MR. McMAHON: It is his own witness, your Honor.

THE COURT: I realize that. Is that the only ground of your objection?

MR. McMAHON: Improper redirect.

THE COURT: Overruled. Read it.

Q "Question: Did the supervisor," this is by

Mr. McMahon at her deposition, "Did the supervisor say anything to you regarding your making a claim against the Penn Central? Answer: I asked him. I said, "Well, I would like to put a claim in because I have insurance on my house and if anyone gets hurt, I would like tofile a claim someplace." He said, "But not here." I said, "It won't be here." He said, "No, you have to go over to Madison Avenue and call them, " and he gave me --"

MR. McMAHON: Then interjected, "Do you mean Lexington Avenue?

"THE WITNESS: Lexington Avenue. He gave me the number and I asked him if I should make a claim, and he said, "Yes, I should. After all she was in an accident, and his general consensus of opinion was that she was hurt badly and certainly we should call the company, inform then and put a claim in, which I did, but I never heard from them."

Were you asked that question and did you give that answer under oath?

A Yes.

RECROSS EXAMINATION BY

MR. McMAHON:

Q But you did ascertain that the escalator was

inspected and the escalator was found to be running properly, isn't that correct?

THE COURT: Wait a second. That's not proper recross. Anything else? You are excused. Thank you.

(Witness excused)

THE COURT: Call your next witness.

MR. COUSINS: Your Honor, plaintiff rests except for Dr. Papas who is in the hospital this morning and can't be here until two o'clock. I have no objection if the Court wishes to proceed with the defense. I have nothing else I can do but ask for an early lunch and I could have him here at one o'clock.

THE COURT: Nobody I respect more than doctors, but, really, things should be done better than that.

Are you ready to proceed, Mr. McMahon, reserving your motions, and so on? I think we ought to start with your defense. We will be going to sit until ten minutes to one. When the doctor gets here, be sure he waits for us. He may have to wait.

Mr. McMahon, will you proceed with any of your --

MR. MCMAHON: May I have a five minute recess,

your Honor?

THE COURT: Of course.

(Recess)

(In open court; jury not present)

THE COURT: Mr. McMahon, when the clerk calls you in, will you come in and not come in later when you find it convenient. These diversity cases are fascinating, but I don't know why we should have more trouble trying them than Federal cases.

What's your problem?

MR. COUSINS: I would like to ask the Court's permission on the certified bill to eradicate any reference to insurance, because it is irrelevant and prejudicial.

MR. McMAHON: I have no objection.

THE COURT: All right.

MR. McMAHON: While we are on that subject, the answer to one of the questions on the deposition did mention insurance.

THE COURT: It wasn't read into the record.

MR. McMAHON: Yes, it was.

MR. COUSINS: That the daughter had her own insurance on her home.

THE COURT: Not any insurance of Penn Central?

MR. COUSINS: Definitely not. Absolutely not.

(Jury present)

THE COURT: As I guess you understand, ladies and gentlement, the plaintiff's case is almost completed. Normally we complete the whole case and then the other side goes. While we are awaiting Mrs. Monroe's doctor, Mr. McMahon has agreed that he will put on some of his evidence. Go ahead.

MR. McMAHON: Mr. Mandia.

L O U I S M A N D I A, 73 Mount Avenue, Atlantic Highlands, New Jersey, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. McMAHON:

Q Mr. Mandia, by whom are you employed, sir?

A Amtrak Transportation Company, at the present time.

Q Prior to that where were you employed?

A With the Penn Central Transportation Company.

Q Before that I assume the Pennsylvania Railroad Company; is that correct?

A Before that the Pennsylvania Railroad.

Q When did you first go to work for the Pennsylvania Railroad Company?

A 1942.

Q What is your present job with respect to title?

A Supervisor of structures.

Q Has that title changed in any manner in the last several years?

A No, it hasn't.

Q Did you hold that title with the Pennsylvania Railroad and the Penn Central and Amtrak?

A Correct.

Q I take it that you are familiar with the escalators in Pennsylvania Station?

A Yes, I am.

Q Are those escalators general speaking under your supervision?

A They are.

Q Do you have a force that takes care of these escalators?

A I have.

Q Is there a procedure, Mr. Mandia, for regular inspection of these escalators?

A Yes, there is.

Q Do you have a force to perform these inspection?

A Do we have a what?

Q A force, aworking force.

A No. Just we have an inspector, not a force, for inspections.

Q What does he do?

A He checks every elevator -- every escalator after the rush hour is over. That would be between the hours of nine and ten a.m.

Q If something is wrong with the escalator, what does he do?

A If he finds any defects, he immediately shuts the stairway down and notifies our department.

Q Incidentally, when anybody employed by the railroad, that is in the station proper, when there is somethirg wrong, a bulb goes out or an escalator is not functioning, do they notifty you?

A Yes, they do.

Q Do you make any record of a complaint received from another department; that is an usher;

a trainman; or any other personnel on the railroad?

A We have what they call a trouble sheet and it is entered on to that trouble sheet.

MR. McMAHON: Can I have that marked for identification, please.

(Defendant's Exhibit C was marked for identification)

Q Mr. Mandia, I am going to show you defendant's Exhibit C for identification. Can you tell us what that is, sir?

A This is one of our trouble sheets. It is a daily sheet made out everyday, and it shows the time the call is received and who received the call and the person making the call and the time the repairs are made on that particular call.

Q What date is that trouble sheet?

A April 13, 1975.

Q Is that record made in the regular course of business of the railroad?

A Yes, it is.

Q And is it kept in the regular course of business of the railroad?

A Pardon me?

Q Is it kept in the regular course of business

of the railroad?

A Yes.

MR. McMAHON: I offer it in evidence.

MR. COUSINS: I have never seen this, your Honor. May I have a moment?

THE COURT: Yes.

(Pause)

MR. COUSINS: Does this have any entries on it pertaining specifically to the B 7 escalator?

THE WITNESS: It pertains to anything that --

MR. COUSINS: Specifically. Does this have an entry on it pertaining to the B 7 escalator?

THE WITNESS: No, it doesn't.

MR. COUSINS: It has no relevance whatever to this lawsuit.

MR.McMAHON: That's just the point, your Honor. If it had a reference to the B 7, the B 7 was shut down or was malfunctioning, it would have been on this callsheet.

MR. COUSINS: That's negative evidence. I object to that. That's for the jury to determine.

THE COURT: There is no dispute that nobody in the railroad reported or claims to have detected a malfunction, is there?

MR. COUSINS: No. That's why I don't think that adds anything.

THE COURT: We will receive it.

(Defendant's Exhibit C was received in evidence.)

BY MR. McMAHON:

Q Mr. Mandia, you told us that the folks under your supervision do --

MR. COUSINS: Your Honor, I have a second objection, excuse me. Specifically, interrogatory number ten asked them to attach, and this is verified, all inspection reports on this escalator. If this document in evidence is purported to incorporated or include in it a note found pursuant to an inspection of the escalator, then I submit it should have been given to us when this was verified --

THE COURT: It is not worth debating about. There is no real issue on this anyhow. Your position is there was something wrong with the escalator and he should have known.

MR. COUSINS: Yes, sir.

THE COURT: You don't claim they knew anything was wrong with it. So what are we fighting about? Let's proceed.

BY MR. McMAHON:

Q Mr. Mandia, could you tell us, plese, sir, the procedures used to inspect the escalators at Penn Station?

A It all depends on the calls that we receive pertaining to that escalator. It could be almost anything. It could be dirt, rags that get caught in the steps, in the webs. Nothing really serious.

Q No, I am talking about what you do generally to maintain them.

A We lubricate -- we oil and lubricate and check for wear and tear.

Q On the parts?

A On the parts, on moving parts.

Q I am going to show you plaintiff's Exhibit 5 in evidence. This purports to be the Otis maintenance chart. Would you look this over,please, sir --

A We have those charts.

Q Pardon me?

Q We have those charts.

Q The Otis charts?

A Yes. These charts are issued to us on the date of the installation, the original installation. That's what we go by. Our people maintain anything and

lubricate whatever repairs are required according to these charts. This is all I can tell you.

Q Are those charts -- once they are done, is it kept for any period of time?

A No. We keep the charts for all time, but nothing is logged on it there because we have a regular maintenance set up, and it is daily.

Q I see.

A The fellows' guide - They use this chart for a guide. That's what they go by. If there is anything that is mechanically wrong that they can't maintain or can't repair, then they call us and let us know about it.

Q For how long has Penn Station, regardless of who owns it, been maintaining its own escalators?

A Since 1973.

Q Were you present when the escalators were installed, when the Garden was put in the area, Madison Square Garden?

A This particular escalator, I was there when it was installed.

Q Are you familiar with the type of escalator?

A Yes.

Q By the way, the people that work for you,

they are all members of a particular lodge, The International Association of Machinists, are they not?

A That's right. They are all machinists and electricians, both.

Q Are they all journeymen?

A Yes, they are.

MR. McMAHON: I have no further questions.

CROSS EXAMINATION BY:

MR. COUSINS:

Q Mr. Mandia, you have one man in charge of inspecting all the escalators?

A That's correct.

Q How many escalators are there, sir, altogether?

A Twenty-eight.

Q One man is in charge of inspecting all those?

A Correct.

Q He does that every single day after the rush hour?

A Every day after the rush hour.

Q Is there a rush hour on Sunday morning?

A Not particularly.

Q Are you aware of the fact that on the day of this accident there was no one from the maintenance

department on the premises at all?

A Yes. We always have a man on the premises Not an inspector, no.

Q Are you aware of the fact there was no maintenance man on duty on the day of this accident?

A There was a maintenance man on duty.

Q Are you aware that the evidence in this case indicates that there was not?

MR. McMAHON: Objection.

THE COURT: Sustained. Please. Just interrogate the witness.

Q Did anyone from the maintenance department, to your knowlege to scene of the accident?

A No, not from our department.

Q Did you participate in any investigation into the cause of this accident?

A No. There was no reason to.

MR. COUSINS: I move to strike that.

THE COURT: The answer is "nc." Just answer the question, please.

Q This man who inspects the twenty-eight escalators every day after the rush hour, is he a former employee of Otis?

A No, he isn't.

Q Was he ever trained by Otis, as far as you know?

A No, he wasn't.

Q How many steps are there on the B 7 escalator?

A I'd say approximately 88 or 90 steps.

Q There are metal treads on each and every step, are there not?

A That's right. They are not threads. They are cleats.

Q The portion that the people stand on.

A They are cleats.

Q I will accept that. Those are made of metal, are they not, sir?

A Correct.

Q Is one of the important parts of the inspector's job to check the cleats to make sure that they are not broken?

A Correct.

Q How many cleats are there on a step, sir?

A I couldn't tell you offhand how many cleats?

Q Certainly more than fifty, are there not?

A I would say so.

Q So that's fifty cleats per step and 88 to 90 steps on that escalator and a total of 82 escalators; is

is that correct?

A That's correct.

Q Incidentally, you said that the escalators are checked after the rush hour on a Sunday morning.

A It all depends.

Q Do you happen to know if this inspector -- what's his name, by the way?

A Al Walters.

Q Is he still an employee of Penn Central?

A Yes, he is.

Q Is he one of the gentlemen waiting outside the courtroom here?

A No. He is on vacation.

Q These daily inspections, looking at the tread, of course, that's a visual inspection, is it not?

A Correct.

Q Looking at the railings to see that they are going at the same rate of speed, that's also a visual inspection, is it not?

A Correct.

Q Did you personally go to the scene of the accident following the injury to Mrs. Monroe?

A I didn't know they had an accident. I wasn't notified.

MR. COUSINS: I have no further questions.

THE COURT: Anything else.

MR. McMAHON: No, sir.

THE COURT: Thank you, Mr. Mandia.

(Witness excused)

L L O Y D C A D O G A N, 158-12 115tn Road, Jamaica, New York, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. McMAHON:

Q Mr. Cadogan, you were here yesterday, Did you get a chance to read your examination before trial, sir?

A Well, not exactly. I only glanced through it. I didn't give it any particular thought or study.

Q When you read it, you signed it, did you not?

A I did.

Q Everything you said in there was as far as you can recall, true and correct, isn't that right, sir?

A That's right.

Q Let me ask you, sir, have you been employed by--

is it Amtrak?

A No, it is Penn Central into Conrail.

Q Conrail you are employed by?

A Right.

Q You were employed by Penn Central?

A That's right.

Q And before that the Pennsylvania Railroad Company?

A That's right.

Q For the last several years you have been an usher at Pennsylvania Station; is that correct?

A That's true.

Q Is it true that part of your job entails taking care of the passengers with respect to the proper track that their train is on?

A That is it.

MR. COUSINS: Your Honor, at this point it is harmless, but if we get into more important testimony, I do object to the leading.

MR. McMahon; I admit I am, sir.

THE COURT: Okay. Go ahead.

Q Will you tell us briefly what you do?

A My duties are to load trains from the upper concourse, see that passengers get on the escalators

and see that they are making their way to the trains, and that's in essence about what we do. Of course, there are questions that we must answer and various things that we must do as far as directing passengers to various places in which they are interested in going.

That's in essence what we have to do.

Q On April 13, 1975, were you performing your duties as an usher for the Penn Central?

A Right.

Q Did you talk with Mrs. Monroe that morning before the train was announced? If you can recall.

A Is that the lady in question?

Q Yes.

A I think the conversation was, " Is this train going to Washington," because it was the ten o'clock train, I believe, that we were loading, and "What time are you going to load the train," and my answer to her, "As soon as possible, I get the word to start loading the train." That's about the length of the conversation, in essence.

Q Then did you turn on the escalator? When you got there, was the escalator on?

A The escalator was on. It was coming towards the loading concourse.

Q When these escalators are not being used, do they sometimes ascend?

A When the elevator is not in use as far as the loading is concerned, we always keep them coming up into the arrival area, based that we have other trains coming in to discharge passengers. When it is going to be loaded, then we turn the escalator to put the passengers on the train from the loading position in the station.

Q If the track is closed off for the evening, would you then stop an escalator?

A If the track is closed off for the evening?

Q Yes.

A It is not very possible. They never close the tracks off for the evening as far as trains are concerned because that particular station have trains coming in all the time. So the escalator must be in motion to some degree.

Q To some degree?

A Yes.

Q I know, but they are coming in. They would come in on the lower platform, isn't that correct?

A They can come in on the lower platform and they can come in on the upper platform also.

Q How are you signaled that the train is ready for boarding?

A When the train is ready, there is a conductor who is at the base of the escalator of the track that I am going to load the passengers on, and he will signal me that the train is now available for loading. So this is the only method I know that the train would be ready, through his signal. It is usually verbal, anyway.

Q Did you get such a signal on the morning of April 13?

A I did.

Q What did you then do?

A The process is to hang aside, put the light on, which indicates to the announcer in the booth that the train is now ready to get loaded. He makes the announcement that the passengers who entered in this particular train go to the track number that he would call, and then when I get my sign up, put on the light, then I turn the escalator down and step outside, and if anybody is there, I say, "You may board."

Q Did you do that on this morning?

A This is general practice. Every day.

Q Was Mrs. Monroe the first one to board that escalator?

A No. She couldn't have been because --

MR. COUSINS: Objection, your Honor. That is a conclusion, not --

THE COURT: Yes. The answer is,"no." Just answer the questions, please, Mr. Cadogan.

Q Do you know how many people were ahead of her on that escalator?

A You said just -- no, I couldn't tell you.

Q When you started the escalator up and before the passengers boarded, what did you do physically?

A Well, may I explain the method by which we start this thing? When I am loading passengers, the escalator is usually coming up. When I start to load, I press the stop-button. That stops the action of the escalator. I turn the key to send the escalator steps down. This is general practice. Step outside, which is about eight feet away from the escalator, and the announcer is already telling people exactly where the track is, so they are waiting to go on the escalator to board their train.

So this is the only physical action, to turn that, in answer to your question, turn those steps down that the people may board.

Q Then you step back about eight feet.

A You have to step outside, yes. There is quite a rush there.

Q Before you stepped outside on this morning, did anybody approach the escalator?

A Well, let me put ittagain in this way. As you know, when the light goes on, the announcer starts to announce the position of the train. So people make a general move. Towards this train or to the gate, I will say. Naturally when I start it down, I step outside, because they are sort of pushy. So you have to get out of the way. The room in there is not too wide. You know, people are very anxious to get on their trains at that time of the morning.

So that's how the situation is.

Q I take it that when you were eight feet back -- when you turned the escalator on, did you observe the escalator then descending?

A Yes, the escalator would descend.

Q Was it operating properly as far as you were concerned?

A Yes. No problem with the escalator at all.

Q Was the handrail moving down?

A Yes, the handrails move down when the key is turned.

Q Were the steps moving down?

A Everything was going in the direction in which I sent it.

Q Then you stepped back?

A Right.

Q And you told thepeople --

A They may board.

Q Did there come a time when you heard some shouting?

A Yes. After I stepped outside and the passengers started boarding, somebody -- there was a little disturbance there, a little hollering that somebody had fallen on the escalator. So I came through the crowd and looked down and I saw what had happened, and I knocked the button off.

Q Did you see who had fallen?

A In the rush of people, I couldn't really -- identify who it was until after I backed those people that had, you know, I backed them off the escalator, and then I noticed the lady was --

Q Did you see a person who had fallen down?

A I didn't see it the minute the person fell. I only saw her when the persn was crumpled on the steps.

Q She was crumpled on the steps?

A Right.

Q When you shut the escalator off, I take it?

A Immediately when I heard the cry, I looked down and I saw there was something wrong, I stopped the escalator immediately.

Q Then what did you do?

A I moved the people back because,,you know, people are still coming in. They probably wasn't aware of what happened, and I moved those back out of the way, and then went down the steps and I brought the lady up and -- with the help of other passengers who was in front of her, they was holding her up, we brought her up and stood her right in the small area-way in front of the escalator.

The police came and they took over. I reported it to my boss, you know. That's it.

Q Mr. Cadogan, after this happened did you observe the escalator -- did you turn the escalator on again?

A No, not in a case like this. You couldn't turn it on.

Q I am talking about when everybody was gone.

A You mean after everything was finished?

Q Yes.

A The escalator went into use. I didn't have a chance to use that escalator personally again, because I didn't have a train for that escalator. But the escalator went into use somewhere.

MR. COUSINS: Objection, your Honor, unless it is to his own personal knowledge or something he saw.

THE COURT: Sustained. I strike that.

Q Did you see the light on at any time that day at the station?

A Oh, yes, the escalator was in use again that day.

MR. McMAHON: Thank you very much, Mr. Cadogan.

CROSS EXAMINATION BY

MR. COUSINS:

Q This accident occurred in 1975, did it not?

A So I understand.

Q Is there much train activity between the hours of, say, midnight and 10:00 a.m. on track -- what track was this, 13-14?

A Thirteen and fourteen, yes.

Q Many in-bound trains during that hour, specifically midnight to 10:00 a.m. on Sunday?

A On my tour of duty? This concerns my tour of

duty which starts at six o'clock in themorning.

Q Tell us, if you know.

A I didn't understand your question, sir.

Q Are there many in-bound trains coming into Penn Station on Track 13-14 between the hours of midnight and 10:00 a.m. Sunday morning?

A I could not tell you on thirteen and fourteen, sir, there are a lot of in-bound trains coming into the station between ten or twelve midnight up to ten o'clock, as you mentioned.

Q On Track 13-14.

A I can't determine which tracks.

Q The answer is you don't know?

A Right.

Q In 1975 was the Penn Central taking any steps to conserve the use of energy and electricity?

A I don't know, sir.

Q You don't know.

A The conservation of electricity? I don't know that.

Q Hadn't there been any instructions from management not to run escalators needlessly when no trains were in use? Hadn't you heard anything about that from management?

A Sir --

Q Just have you heard anything?

MR. McMAHON He is trying to answer.

A I don't know, sir.

Q You don't know? Were you personally present between midnight and 10:00 a.m. on Sunday morning?

A At six o'clock up to ten o'clock I was there, sir.

Q When you were there at 6;00 a.m., let's use that, 6:00 a.m. to 10:00 a.m., do you know to your own personal knowledge if the escalator to the platform 7, the B 7 escalator, was running the whole period of time? Do you know that to your own personal knowledge?

A It was running when I got to it at o'clock and it was running before. In my passing I see the escalator has been running.

Q In other words, when you got there at -- to board the 161 train to Washington, you don't know how long the escalator had been running, do you?

A 9:45. Well, it was running.

Q Do you know how long it had been running?

A I don't know how long it had been running.

Q That is all I am asking you. No problem. You don't know if the first person on the escalator when

you were boarding that 161 train to Washington was a man or a woman, do you?

A No.

Q Did you see the first person to get on the escalator?

Just yes or n.

A No.

Q Did you specifically see Mrs. Monroe get on the escalator?

A No. Not in the rush that -- to board the train.

Q You didn't see when she got on, did you?

A No.

Q After the accident occurred and you heard someone shout, "Stop" and you shut the escalator off, then you went down to render assistance, did you not, sir?

A Yes.

Q A you were proceeding down the escalator to help her, you saw passengers on the escalator in her immediate vicinity, did you not?

A That's right.

Q Were there some men there?

A Yes.

Q And did you also see any women?

A Men and women.

Q Were some people at that point when you went down to render assistance, were some people on both sides of her?

A Yes.

Q In other words, some were a little further down the escalator than she was?

A Yes. Some were ahead of her and there were some also loading in behind her.

Q And some of these people were also rendering assistance, were they not?

A They were, yes.

Q You don't have any personal knowledge if any of those people were standing ahead of or behind her before the accident, do you?

A Well, just looking at it, sir --

Q No, no. Did you see personally, can you testify under oath as to whether or not some of the people who were rendering assistance to her were standing either in front of her or behind her before the accident happened? Do you have any personal knowledge? Did you see?

A I don't understand your question, sir, really.

Q When you got down to the area where

Mrs. Monroe was injured on the escalator, you saw people, some in front of her, some behind her, correct?

A Right.

Q In other words, further down the steps and further up the steps?

A Yes.

Q Do you know where those people were standing before the accident occurred?

A No.

Q No, you didn't see them, did you, sir?

A Do you know the width of the escalator, sir?

Q I am not talking about the width. We are talking about who was further down and who was further up. That has nothing to do with the width, does it, sir?

A Yes, because there is only one person can get on the escalator at a time, sir, so the people that was in front of her had to go down ahead of her.

Q Sir, these escalators are two-and-a-half feet wide, aren't they?

A Not the one on 13 and 14. You couldn't get two people walking side by side on the escalator, sir.

Q In other words, if someone -- if Patrolman Sova testified that they were two and a half to three feet

wide, he would be in error?

A I don't know what he told you, sir, but I happen to be loading this escalator for quite a number of years, and I know exactly how -- only one person at a time, sir.

Q You tell us, if you would, how wide are the steps on this escalator?

A It is not the width of two people at the same time going down, sir. I couldn't give you the specific length, sir.

Q I don't want to know the length. I want to know the width. You are telling us it is impossible for two people to move side by side on these steps. What's the width of the step?

A I don't know the width of the step.

Q You don't know?

A No.

Q Are you able to state that when Mr. Sova testified under oath that the step was two and a half to three feet wide that he was wrong?

MR. McMAHON: Objection, objection.

THE COURT: Sustained.

MR. McMAHON: That isn't two and a half --

THE COURT: It is sustained on other

grounds.

Q In other words, you are not able to tell us the width of the step?

THE COURT: He said that. Please.

Q How long have you been an usher at Penn Station?

A Say about six years.

Q Six years?

Q Right.

THE COURT: Look, let us stop repeating the answers, let us just ask questions and let us get through with this.

Q As the people got on the escalator on this morning, did you pay any attention to who got on first, second, third or in what order?

A No, I never look at them.

Q This train was scheduled to leave at 10: a.m.; is that correct, sir?

A Right.

Q It is your custom and practice and indeed on this occasion you got there about a quarter of ten?

A It was sometime before a quarter of ten, sir.

Q But you certainly got there before it was

time to board?

A I have to.

Q In fact, you were chatting with Mrs. Monroe for a few minutes?

A I was answering the question she asked, sir.

Q You were speaking with her, correct?

A Right.

Q She told you she was going to visit her sister, didn't she?

A Something of that nature.

Q Visiting her sister certainly has nothing to do with what train to take, does it? So you were speaking with her, were you not?

A All right, sir.

Q Were there other people congregating in the area as it approached time to board the train?

A Yes.

Q This is on the upper concourse at Penn Station, is it not?

A It is.

Q And the B 7 escalator runs down to the train level, does it not?

A It goes to the train level.

Q And in Penn Station all the trains are on one level; is that correct?

A The boarding of the trains are --

Q The trains themselves, the tracks.

A The tracks, yes.

Q They are on one level?

A Yes.

Q The upper concourse and the lower concourse refer to passenger concourses; is that correct?

A That's true.

Q At approximately what time did you turn on the escalator to descend, whether it was stopped or ascending, what time did you make it descend?

A 9:45.

Q That was fifteen minutes before the train was even scheduled to leave?

A That's right.

Q In your practice, sir, do trains occasionaly leave later than anticipated or scheduled for various reasons?

A Would you repeat that question?

Q At Penn Station or any railroad you have been with, do trains from time to time leave later than scheduled?

MR.McMAHON: Objection to the relevancy.

THE COURT: Sustained. I think some things jurors know about without slogging through them.

MR. McMAHON: Sometimes the trains are late.

Q Is it a fair statement, though, that certainly the Penn Central trains wouldn't leave before they are scheduled to leave, would they?

A It is not the normal thing, no.

Q Due to the accident you had to bring some passengers down to the Platform 7 which was between Track 13 and 14 by a different route, did you not, sir?

A Due to the accident I had to -- no. What happens in a case like that, when you are boarding the train --

Q Excuse me.

MR. McMAHON: Let him answer.

THE COURT: No. I don't think he has the question. Did you take some people into the train --

THE WITNESS: On the opposite side.

Q They had to walk some distance to get to the train; is that correct?

A They had to walk across the concourse.

Q It took time to walk across the concourse.

A Okay.

Q This train didn't leave before ten a.m., did it?

A It left on time.

Q It left right smack at ten o'clock?

A It left when I clocked it out, sir, which is ten o'clock. The departure of the train downstairs, when I put the light out upstairs, this is when we cut off the passengers. What time it left downstairs I really couldn't tell you exactly.

Q So that it could have left later than ten o'clock in fact?

A I wouldn't have known.

Q It could have?

A I wouldn't know.

Q Could it have?

MR. McMAHON: Objection.

THE COURT: Mr. Cousins, really, I want you to just stick to what you need and not be argumentative and let's get this done. You have about two or three more minutes. Bring your present portion of cross to a conclusion.

Q You assisted the plaintiff up the escalator

back to the top, did you not, sir?

A Yes.

Q After you stopped it?

MR. McMAHON: Objection as repetitious.

MR. COUSINS: It is not. I haven't asked this.

THE COURT: You read in his deposition. Come to some new things, if you have any.

MR. COUSINS: I do.

THE COURT: Get to them.

Q When you went down to Mrs. Monroe on the escalator, did you ask or shout for any assistance to a police officer?

A No. Not when I went to her assistance on the escalator, sir.

Q Who helped you bring her up to the top?

A The passengers that were -- a couple of the passengers that was ahead of her.

Q Did you extricate her foot from the escalator or was that done by one of the passengers?

A The position is that we just helped her up. I don't know what the condition of her foot was until after we got her up against the wall, sir.

Q Did you get her foot loose from where it was

caught?

MR. McMAHON: Objection.

THE COURT: Sustained.

Q Do you have any knowledge of who did it?

MR. McMAHON: Objection.

THE COURT: Sustained.

Q When you got to the top of the escalator, were the police there?

A No. The police were summoned after we got her upstairs, sir.

Q How much later?

A I couldn't give you a time, I dont' know.

Q Didn't you call out for a police officer who was nearby?

A The police officer was called by another usher or someone else who was passing and saw the situation or possbily a passenger, and then he came forward,sir. What I want you to know -- it wasn't done by myself. It is just the answer to you, sir.

Q How long after you got Mrs. Monroe to the top of the escalator did the first police officer arrive on the scene?

A A very short period of time. I couldn't give it to you in minutes, no, sir.

Q About a minute?

A Maybe about a minute. Maybe about two minutes, sir.

Q Somewhere in that area?

A Right.

Q Had you started the escalator descending again before the police arrived? You shut the escalator off?

A Right.

Q You went down to assist Mrs. Monroe. With the aid of the passengers you brought her up.

A Holding her up against the wall, sir.

Q Within a minute or so the police arrived?

A Correct.

Q Were you helping her up until the police arrived?

A I assisted the policeman.

Q Before they arrived, did you help hold her up?

A Yes.

Q Until the police arrived?

A Right.

Q After the police arrived they went and got a chair for her, did they not?

A Yes.

Q Okay. During this period of time while you were helping hold her up waiting for the police, was the escalator stopped?

A Of course.

THE COURT: We are going to stop for lunch at that stopping point. We will take a slightly extended lunch hour. Let's come back at 2:15.

MR. COUSINS: Your Honor, may I ask the Court not to speak to Counsel or other witnesses during the lunch hour?

THE COURT: No. Please.

(Jury not present)

THE COURT: First off, I don't give that instruction. But, secondly, I certainly don't see why you ask for that kind of instruction in the presence of the jury. Don't do it in my courtroom.

MR. COUSINS: Ihave never been in your courtroom. I certainly meant no offense. I apologize.

THE COURT: However common it is, I must tell you I have never heard it before. I may have had even more jury trials than you. It is not appropriate in my judgement. Perhaps you ought to think about that.

2:15.

(Luncheon recess.)

AFTERNOON SESSION

2:20 p.m.

(In open court, jury present)

L L O Y D C A D O G A N, resumed.

CROSS EXAMINATION CONTINUED

BY MR. COUSINS:

Q The escalator was still stopped when the police arrived, was it not?

A Yes, sir.

Q After the police arrived, did you take some of the passengers down to the platform by another route?

A I took some of the passengers across the concourse on that level to another staircase.

Q But that was -- you waited for the police to arrive before you did that?

A Of course.

Q When the police first arrived, sir, was the train still in the station?

A Yes, it was.

MR. COUSINS: I have no further questions.

THE COURT: Anything else?

MR. McMAHON: No, sir.

THE COURT: Thank you.

(Witness excused)

MR. COUSINS: Your Honor, may it please the Court, Dr. Papas is now here, and with Mr. McMahon's consent, I'd be happy to finish up the plaintiff's case.

THE COURT: Go ahead.

MR. COUSINS: Your Honor, so I don't forget, I have here at this time a certified bill from the hospital. May I incorporate it as part of plaintiff's Exhibit 11, which is the certified hospital record.

THE COURT: Any objection?

MR. McMAHON: No objection.

THE COURT: All right.

MR. COUSINS: During lunch hour I obtained from the 1973 statistics, Health Education and Welfare, the life expectancy of a 78 year old white female in this country, and it is 8.8 years, sir. I would respectfully ask the Court to take judicial notice of that.

THE COURT: All right.

A L E X A N D E R P A P A S, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. COUSINS:

Q Dr. Papas, are you a physician duly licensed to practice medicine in the State of New York, sir?

A Yes.

Q For how many years have you been so licenses?

A Since 1942.

Q Will you tell us about your medical training and background, your medical school and your training?

A I trained at Columbia Medical School, Columbia College, Columbia Medical School, and I specialized in orthopedic surgery. I am an attending orthopedic surgeon at St. Vincent's Hospital, French Hospital, Bellevue, St. Elizabeth's and the Institute for the Crippled and Disabled.

Q In the practice of medicine, did you come to specialize in any partiular discipline or area of medicine?

A Yes, I stated that I am an orthopedic surgeon, trained as such.

Q Can you tell us, sir, what the area or field

of orthopedics deals with?

A Bones and joints.

Q Does that also take into its area of speciality the surrounding ligaments and tendons and tissues?

A Everything that has to do with the skeletal system.

Q Are you affiliated with any county or state or national medical associations or societies?

A Yes. I am a member of the New York State, New York County, the A.M.A, the American College of Surgeons and the American Academy of Orthopedic Surgeons.

Q The A.M.A. is the American Medical Association?

A That's right.

Q Have you ever been associated with, either full or part-time, any teaching positions in any colleges or hospitals?

A Yes. I am assistant professor at New York University.

Q Doctor, in 1975, in April, do you have occasion to undertake the management and become what is known as the attending physician for a Mrs. Elizabeth Monroe?

Q What were the circumstances under which she became your patient, sir? Where was it, and things like that?

A It was my weekend on, and anything that comes in the emergency room, the resident has to call me. We have residents at the French Polyclinic that are being trained for orthopedic surgery, and the senior resident has to call me everytime a case comes in, when it is my time and I am on duty.

Q While you were on duty at French Hospital on April 13 in the morning, were you called in connection with injuries sustained by Mrs. Monroe?

A Yes. In the afternoon.

Q While she was at the hospital and admitted, was she your private patient or was she a patient of yours in your service?

A She was in my service, yes.

Q Incidentally, at that period of time, was there also a Dr. Giannaris there at that French Hospital?

A Ginnaris is my resident.

Q Was he a resident in any particular speciality?

A Orthopedic residence.

Q Did he also treat Mrs. Monroe at the hospital?

A Oh, yes.

Q We have here in evidence, Doctor, the complete hospital record from French Hospital together with the X-rays. Feel free to refresh your recollection by referring to it, if you need to, at any time,

When you first examined Mrs. Monroe, could you tell us what you found, what did your examination reveal in the way of injury?

A Well, when I examined her, she was still in a cast because Dr. Ginnaris had already put her in a cast in the emergency room, and we discussed the X-rays and we found that the reduction was adequate, and we would just watch her. That was our plan.

Q How many attempts were made -- how many reductions were done in Mrs. Monroe's case?

A Two. Two attempts in the emergency room.

Q Can you tell us why there were two?

A Because the first one was not successful and the second one, we had to try at least twice before we decided on open reduction.

Q You used the term "open reduction," and I assume the contrary of that is closed reduction. Can

you tell us what those terms mean, sir?

A Closed reduction means just to pull on the bone and put it, set it in a straight position and put a cast on. Open reduction means to open it, open the skin and the muscles and everything and go to the bone and put it in place and hold it there by means of a screw or any metal.

MR. McMAHON: Objection and move to strike. That's not what happened here, was it?

MR. COUSINS: He said he did a closed reduction. My next question is why did you elect one procedure instead of the other.

THE WITNESS: I thought the question was open or closed reduction.

Q You are absolutely correct. My next question is, in this particular case, did you undertake to do a closed or an open reduction?

A The closed reduction was done in the emergency room and we elected to -- we decided that that was acceptable position for us, and we stayed with the closed reduction.

Q Can you tell us what factors went into your judgement to do a closed reduction instead of an open reduction in this particular case?

A Well, if you reduce the bones and they are in fairly good position and then the patient is older then a teenager, then you decide what are the risks of surgery and what are the risks of just leaving it the way she is. We elected to go on without taking risks in surgery.

Q Is the fact that a reduction is closed rather than open any indication of the severity or lack severity of the particular injury?

A No.

Q During lunch time, during the break, did you examine the X-rays which were taken right at the emergency room in French Hospital the day of the accident?

A Yes. When I came here at a little after 1:30, I examined the X-rays, yes.

Q Did you also meet me for the first time and discuss some of the aspects of the case?

A Yes.

Q Do those X-rays which you looked at at lunch time actually show the fractures that Mrs. Monroe had in the hospital that day?

A Yes, of course.

MR. COUSINS: With the Court's permission, may we set up the shadowbox so the doctor may show them

to the jury?

THE COURT: Yes.

Q Doctor, would you bring the X-rays over.

A This is the X-ray that the patient had taken in the hospital on the day of entering in the emergency room and this is the X-ray of the ankle, the left ankle. It shows the entire ankle. This bone that I am pointing to is the talus or the ankle bone. It belongs over here. It has been displaced completely to the outside of the leg, lateral. In addition, the ankle has been displaced forward.

I don't know if you can see it from a distance, but this belongsup here and this belongs here.

Q Was this in the first set of X-rays that was taken prior to any reduction, sir?

A These are the initial X-rays taken when the patient came to the hospital. These are the initial X-rays after the accident.

Q Is the date they were taken on the X-ray itself, sir?

A The date is on that, 4/13/75, left ankle.

MR. McMAHON: Is there any way to mark that X-ray, the first X-ray, and the other X-rays as they are put up?

THE COURT: You can take a paper clip and mark them with a tab. Do you have any other questions about this one?

THE WITNESS: We have to compare this X-ray with the other X-rays.

(Plaintiff's Exhibit 17A was received in evidence.)

THE WITNESS: The second set of X-rays were taken right after the cast -- this is the next X-ray after the attempt of the resident to reduce it, and it is obvious that the ankle is not in place. It is still displaced, it is still out of place. We elected to go through another reduction. This is the ankle in a cast with complete reduction, complete reduction with the ankle sitting in the mortice and the ankle bone is directly underneath the shin bone. We elected to accept this position.

The second set is a follow-up which reveals the position to have been maintained. This is the final X-ray that I took after twelve weeks in a cast. It shows the healing of the two bones in the ankle. The outside bone is called the lateral malleolus is completely healed. The medial malleolus is not completely healed with fibrous union, and the third malleolus or the posterior

tip of the tibia is partially healed. We let her go without a cast then, and she started physical therapy.

That's it. Those are the X-rays we have in evidence.

(Plaintiff's Exhibits 17A through 17E, inclusive, were received in evidence.)

Q Doctor, I have here from a medical atlas an anterior view of the typical bones of the leg. Can you with a red pen mark and deliberate --

MR. McMAHON: Objection.

THE COURT: He hasn't finished the question. Let him finish the question.

Q (continuing) Can,you, sir, mark with a red pen and show the location of the three fractures that Mrs. Monroe had, sir?

THE COURT: Do you have an objection, Mr. McMahon?

MR. McMAHON: Not now, sir.

THE COURT: I see. If you were more patient, you would have saved all that work.

A I'd rather show them on my own ankle. The fractures are here, there --

Q I have these if they are any help.

A No, you can't demonstrate the complete

dislocation in the --

MR. McMAHON: Pardon me?

THE COURT: Doctor, you can't be heard.

THE WITNESS: These drawings are not adequate for our purpose.

MR. McMAHON: I renew my objection and move to strike.

THE COURT: Yes. Strike them out. Actually, we don't need a course in orthopedic surgery here, Mr. Cousins. Let's move on.

Q Doctor, as you suggested, using your own foot, can you show the jury the location of the three fractures anatomically, where on the foot they were.

A I can show them on your ankle and let them look at your ankle. I don't ask you to take your sock off because sometimes my socks have holes, I don't want to be embarrassed. This is the ankle joint. This is the joint that moves up and down, and also moves to the inversion and eversion. The ankle is formed by the fibula, the outside bone of the ankle, and the medial malleolus of the tibia, and the posterior lip of the tibia, which is way deep down. The ankle in Miss Monroe, the foot was out here when she came in. The foot was out here, the ankle was like that.

Q Is that about forty-five degrees to the external side?

A About, yes.

Q Was that fractured on both sides and also in the back?

A That's what trimalleolar means. Three bones in the ankle were fractured, yes.

Q You mentioned physiotherapy in the hospital. What was the purpose of that, sir?

A The purpose of physiotherapy is to teach the patient walking with parallel bars first and then with a walker so she can be able to balance on one leg. and be discharged to her house as soon as possible.

Q Can you describe briefly for us what a walker is or what it looks like?

A A walker is a little rectangular frame made out of aluminum and the patient just grabs it like this, and it has four legs and walks on it or jumps on it while she leans on it.

Q Is that something used inlieu of crutches?

A We don't like crutches for the older people because they fall and break something else.

Q When you allowed Mrs. Monroe out of bed the first time, the hospital record indicated non-weight

bearing. Would you tell us what that means and why that instruction was given, sir?

A Well, we don't want her to step on the cast of the broken ankle. That's what non-weight bearing means. It means she should not step on it.

Q In other words, this was a non-walking cast, is that correct?

A We don't put walking casts on ankle fractures that include both malleolar, all three malleolar.

Q When the second attempt to reduce the fracture was done, was it necessary to remove the first cast?

A Yes. Naturally. You can't reduce anything unless the cast is off.

Q So actually Mrs. Monroe had a long leg cast put on, then taken off, and then another one put on; is that correct?

A Yes. That's the procedure.

Q Then over a period of time the length of the cast was shortened as she convvalesced?

A Yes. I cut the cast down below the knee to give her knee a little stability, and then we cut the rest of the cast at twelve-weeks interval.

Q Doctor, throughout the hospital records and in medical talk we hear the terms grossly satisfactory

or satisfactcry alignment. Does that man that it was as good as it was before the injury? What exactly does that term mean? Is it perfect.

A Well satisfactory means it is in place, as good as it will be.

Q Did you examine Mrs. Monroe during the luncheon recess here to determine her present status and present extent of recovery?

A Yes, at your request, I did.

Q Also, incidentally, did you review Dr. Kaye's report which was of an examination done in August of 1975?

A I read the report, yes.

Q Coming back to your findings today, your present examination, do you find any evidence of any injury remaining or residual effects or is she completely recovered from the injury sustained on April 13, 1975?

A Yes, the ankle has limitation of motion and there is pain on manipulation and also there is embarrassed circulation.

Q Which means what, sir?

A Which means that the circulation on that leg is not as good as on the other side.

Q Is there a difference in the size, the

circumference of the two?

A No, in color. The skin color is different.

Q That's a result of what, sir? What does that indicate?

A Well, when we have fractures, there is some interference with the flow of blood from the arteries to the veins and back and forth, and therefore there is some stagnation of the blood there, and it discolors the area.

Q Does an injury to a person such as Mrs. Monroe's age, this particular injury, have any effect on either precipitating or aggravating an arthritic condition?

A Any time you have a fracture of a severe nature involving a joint, especially the ankle, you always have after effects of arthritis.

Q Was this a severe fracture?

A This was a severe natural fracture, yes. As severe as you can get.

Q Did you find other than discoleration -- did you find, for example, on August, 1975, Dr. Kaye --

THE COURT: Is that 1975?

MR. COUSINS: Yes, your Honor, thank you, sir.

Q In August, 1975, Dr. Kaye found that the range of motion in the right ankle was only seventy-five percent of expected normal. How much normal motion or how much range of motion did you find on your examination of her today, sir

A Well, I told you I found 25 -- about twenty-five percent limitation.

Q In other words, she can only move her ankel three-quarters of its normal range or twenty-five percent limited?

A It is limited, yes.

Q And that would be, then, the same thing as Dr. Kaye found back in August of 1975?

A Approximately.

Q Do limitation and compromise of circulation and a discoloration -- is this a cause of pain in the ankle in the foot when walking and other times?

A Fractures in the weight-bearing joints, in the healing process and after healing, are always painful, especially in the elderly.

Q In speaking to Mrs. Monroe during the luncheon recess, did you inquire as to how she was presently feeling, how the foot was?

A Yes. She told me that whereas previously

she could walk out to the store by herself, now she cannot do it, she has to have some help. She has pain when she walks.

Q In your experience, sir, as an expert in this field, do you find that her complaints and what she told you is consistent with this type of injury for a woman of her age?

A Yes, of course they are.

Q Doctor, I guess it has been approximately a year and a half since the accident. In your opinion, sir, with a reasonable degree of medical certainty, are the present -- is Mrs. Monroe's present condition, her limitation, her discoloration, her pain, are these conditions permanent, sir?

A Just about permanent. If anything they may become a little worse, with more arthritis setting in.

Q Doctor, can you just tell us, for all the work you have done for Mrs. Monroe, at the hospital, the treatment, etc., what would be a fair value for your services, in your opinion?

A Well, the follow-up in the hospital,,about $500.

MR. COUSINS: Doctor, thank you very,very much.

MR. McMAHON: May I have a few questions, sir.

CROSS EXAMINATION BY

MR. McMAHON:

Q Doctor Papas, you knew, of course, that Mrs. Monroe was being treated by a Dr. Kaye in Alexandria, Virginia, for arthritis ?

MR. COUSINS: Objection. That is not a question, it is a statement.

THE COURT: He is asking. Did you know that?

A When, now?

Q No. Before the accident.

A I had no idea of it.

Q Were you shown the report of Dr. Kaye?

A No.

Q Did Mrs. Monroe ever tell you that she had difficulty with an arthritic condition in her knees?

A She has arthritis of the knees, yes.

Q Did you ever take a picture of the other ankle, the right ankle?

A We don't have it in the file, no.

Q Also, on the first X-ray that you put up, that to me showed a posterior dislocation; is that correct?

A Anterior dislocation. Just the opposite. It

makes no difference. If [illegible] foot is back, the leg is forward. We call [illegible] dislocation.

Q One way of calling that is posterior?

A It makes no difference.

Q Then you had a fracture on one side; is that correct?

A On one side and on the other side and in the back.

Q And then you had a fracture on the other side?

A [illegible] in the back.

Q One side here this way, one side here that way and the back; is that right?

A Trimalleolar. Three malleolar involved.

Q That's the way it is.

A That's right.

Q Also there is another word for that too, that would be -- what do they call it, rotating --

A No. This is a trimalleolar fracture. The rotating is how it happened, and we are not involved in that because she didn't play football. The rotation is for football players, so we won't worry about that.

Q From the X-ray that you saw, this probably happened in that manner; is that correct?

A They always have to happen with some rotation to break the bone, yes.

Q When you have that happen, you have to have some weight bearing on that bone, isn't that correct, sir?

A Well, if you fall down, that's weight bearing.

Q I am going to show you a part of this hospital report with your name on it. Did she tell you that she fell down?

A No, this is a smear, this has nothing to do -- it is a smear.

Q Your signature is there, is it not?

A Yes, but you have to get the history from the first examination in the emergency room.

Q Is that in here, Doctor?

A Yes.

Q Could you find it?

A I can find it, if you can read it. "About 10:00 a.m. the right ankle was caught in the escalator." That's the history that the intern gets, and when I talk to the patient, I don't bother how they get it. I just want to get them where they should be.

Q Right. Where did -- I guess this is a discharge smear?

A Yes.

Q Where did the fall come from? Is that in the hospital record?

A Yes. She was caught in the escalator and fell.

MR. McMAHON: Thank you very much, Doctor.

REDIRECT EXAMINATION

BY MR. COUSINS:

Q Mr. McMahon asked you a moment ago, did you look at Dr. Kaye's report, and I think you said no. This is the one he is referring to. Did you see this during lunch? This is the one dated August 4, 1975.

A The X-rays, I said yes. I thought he was talking about case report from the arthritis.

Q No, this piece of paper he was referring to.

A I looked at this, yes.

MR. COUSINS: Am I correct that this is what you were referring to?

MR. McMAHON: Yes.

THE WITNESS: I already answered that I have seen that.

Q Doctor, in the emergency room report, which is part of the hospital record, it says "place of accident and patient's statement," is that correct, sir?

A It has to be. That's what they put down when the patient is asked the place of the accident. They just put it down.

Q That entry is made by hospital personnel?

A That's made by hospital personnel in the emergency room. I have nothing to do with it.

Q What does that say, sir?

THE COURT: You need not bother the doctor with reading something he didn't write. You may read it later. It is in evidence. Anything else for the doctor?

MR. COUSINS: Not a thing.

THE COURT: Thank you, sir.

(Witness excused)

THE COURT: The plaintiff rests. Why don't you go ahead with the rest of your case, Mr. McMahon. We will reserve everybody's rights.

A L A N K E N W O O D, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. McMAHON:

Q Sergeant Kenwood?

A Yes, sir.

Q Sergeant Kenwood, I take it you are a New York State Railroad Patrolman assigned to the Penn Central Transportation Company and on the payroll of the Penn Central; is that correct?

A That's correct.

Q On April 13, 1975, did you have a conversation during the day with Mrs. Serafini, the lady sitting over here?

A Yes, I did.

Q Do you recall what time that was?

A It was approximately four o'clock in the afternoon.

Q I take it that she came over to you -- if I may lead for a little bit -- to find Patrolman Sova to thank him?

A That's right.

Q Did she ask you for anything else?

A She wanted to know who she would get in touch with, I don't know exactly how it was worded, to handle a lawsuit or to--

Q Or what, a claim?

A The claim, right.

Q Did you answer her?

A I told her she would have to see the claims

department.

Q Was there anything else that she said?

A Not that I can recall.

Q Did she ask you about the escalator?

A No.

MR. McMAHON: Thank you very much.

CROSS EXAMINATION BY

MR. COUSINS:

Q Sergeant Kenwood, where did this conversation take place, sir?

A In our office.

Q Are you absolutely positive that it occurred at 4:00 p.m.?

A Approximately 4:00 p.m.

Q When you say in your office, is this like the police station in Penn Central?

A That's right.

Q Were you the only one on duty at the time?

A No.

Q Was Lieutenant Rockefeller there?

A He was in the station. Exactly where, I don't know.

Q What time do the shifts change, the police shifts?

A Four o'clock.

Q This was about four o'clock? Patrolman Sova was then just about going off duty or perhaps had already just left, because he wasn't there, am I correct?

A I thought I recalled him being there at the time.

Q Did you see him speak to Mrs. Serafini?

A I don't recall if he did or not.

Q She gave you the message that she had wanted to tell him directly?

A She said she wanted to speak to him and thank him for --

Q If he was there, did you go and get him for her?

A I thought I had gotten him and brought him out front.

Q Do you remember?

A I said I thought. I don't remember.

Q Were there other police officers around?

A Yes.

Q The lockers are also, aren't they, in that area?

A In the back room, yes.

Q Do the patrolman generally come in to work in civilian clothes and then change into their uniforms?

A That's right.

Q So this was a period of time when some men were leaving and going into civilian clothes and others were coming in and getting into their uniforms or perhaps had just gotten into their uniform and were in the area; is that correct?

A Yes.

MR. COUSINS: No further questions.

MR. McMAHON: Thank you very much.

(Witness excused)

H A R O L D R U S S E L L, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. McMAHON:

Q Mr. Russell, by whom are you presently employed, sir?

A Conrail.

Q Before that I take it with the Penn Central?

A Penn Central.

Q And before that with the Pennsylvania Railroad

Company; is that correct?

A Right.

Q What is and has been your job?

A Maintenance of equipment in Penn Station.

Q Are you a member of a lodge of the International Association of Machinists?

A That's right.

Q Which lodge is that, sir?

A I think it is 10--something. I am not sure.

Q Are you a journeyman machinist?

A Yes.

Q What are your duties generally within Pennsylvania Station?

A Escalators, elevators, maintenance of same.

Q Maintenance of moving equipment other than railroad cars?

A Right.

Q Referring only to the escalators, would you tell us, please, on April 13 -- what's the date of that. We will have to work backwards. On April 14, 1975, what was your particular job?

A Lubricating escalators.

Q Would you tell us, in your particular job of

lubricating escalators, does that include the B 7?

A It could.

THE COURT: Did you say it could? He asked you did it.

THE WITNESS: I don't remember now. That's going back.

Q Will you look at --

A This is a check sheet.

Q Would you look at Plaintiff's Exhibit 3 in evidence and tell us whether or not that refreshes your recollection as to your lubricating or checking or whatever you did to B 7?

A Yes. I checked it that day, yes.

Q How did you go about checking it?

A See that it is running, in good lighting, and that it is clean, and no water around, slippery spots. That's about it.

Q Is there a list there that you follow?

A Yes. I got it all-- general condition was good, lighting, interior, exterior was good, operating properly, no defects.

Q No --

A Defects, none.

Q What about lubrication?

A We take one escalator a day.

Q Pardon me?

A Or two. One escalator a day, we open it up and oil the chains, and stuff.

Q Do you do that?

A I have another man with me.

Q When you lubricate escalators?

A Yes.

Q You go about the station and do you do one a day?

A One, maybe two.

Q What else do you do once a month?

A If there are any defects, we repair them, too. Need help, I get help.

Q Do you check the parts?

A I check chains and moving parts on the escalator.

Q Have you ever seen a checklist like this Otis maintenance checklist which is plaintiff's Exhibit 5?

A Yes, we got about the same thing.

Q Pardon me?

A We got the same. Same thing.

Q Look it over carefully.

A Yes.

Q For how long a period of time have you been checking and repairing and maintaining or inspecting, or whatever you do to escalators at Penn Station?

A I been on the job twenty-nine years.

Q As far as you know, during that period of time, has t' Otis Company ever been called upon to maintain these escalators?

A No, not that I know. No.

Q If you found a defect in an escalator or some other area of the station or an elevator, what would you do?

A I would report it right away to my foreman, and he would get help and repair it.

Q Does that mean that you could repair it or somebody else would repair it?

A I could repair it and he would give me help, and I would repair it, or somebody else could do it. Either way.

Q Would that call go on any checksheet or callsheet?

A Yes, it would. In the foreman's office.

Q Is there a checksheet in front of you or a callsheet dated April 13, 1975?

A Yes.

Q Is there any indication that there was anything wrong with the B 7 escalator?

MR. COUSINS: Your Honor, we know it doesn't, and it speaks for itself anyway.

THE COURT: Sustained.

MR. McMAHON: No further questions.

THE COURT: Any cross?

MR. COUSINS: Very, very briefly, your Honor.

CROSS EXAMINATION BY

MR. COUSINS:

Q When you check these escalators, in fact you say you did it on the 14th, the day after this accident; is that correct?

A That's what it looks like.

Q You personally checked it?

A Yes, yes.

Q You checked it to see if it was clear?

A Yes.

Q That means nothing on the steps?

A Right, or in front of the escalator.

Q You checked to see if the lighting was adequate; is that correct?

A That's right.

Q You checked to make sure there was no water in the area?

A Right.

Q And nothing slippery on the ground?

A Correct.

MR. COUSINS: No further questions.

REDIRECT EXAMINATION BY

MR. McMAHON:

Q Did you check the running condition of the escalator?

A I did.

RECROSS EXAMINATION BY

BY MR. COUSINS:

Q How do you do that, watch it and see if it runs?

A Watch it. Stop it and run it up and down. Check it out.

Q You do this with nobody on it, though, don't you?

A Of course.

MR. COUSINS: Thank you very much.

(Witness excused)

W I L L I A M J A C K S O N, called as a witness in behalf of the defendant, being duly sworn,

testified as follows:

DIRECT EXAMINATION BY

MR. McMAHON:

Q Mr. Jackson, to save time, you are now employed by --

A Amtrak.

Q You were employed by Penn Central and you used to be employed before that by the Pennsylvania Railroad Company; is that correct?

A That's right.

Q When did you first go to work with the Pennsylvania Railroad Company?

A July 11, 1951.

Q About twenty-five years ago?

A Right.

Q You are a member of a lodge in the International Association of Machinists?

A Yes.

Q You are a journeyman, I take it, machinist?

A Yes.

Q And you have been for a number of years?

A Yes.

Q Part of your duties with the railroad pertained to the maintenance, repair, checking, and so on,

of escalators and elevators in Pennsylvania Station; is that correct?

A Yes.

Q I show you plaintiff's Exhibit 2 in evidence.

Mr. Jackson, from that exhibit did you inspect or check, or whatever you do, or look at the escalator B 7 on April 12, 1975?

A Yes.

Q How did you go about making your inspection?

A Well, we go there -- go there and watch the elevator run -- the escalator run. If it was going down, see if it making any noise or handrails not moving, or anything. Then I reverse it, take the key, stop it first, then reverse it, run it up. Then I take a couple of rides on it and check for oil, grease, lighting of the area around it, the cleanliness.

Q Occasionally, once a month, or whatever it is, do you go about lubricating or oiling these escalators?

A Lubricating and greasing.

Q Do you check the moving parts?

A You checks the chains, the steps, and so forth, handrails.

Q The escalator B 7, to your knowledge, was that

operating properly on April 12, 1975?

A Yes, it was.

Q Incidentally, when something is wrong with an escalator or elevator, do you call into Mr. Lou Mandia's office?

A We pull the main switch, put a "Do Not Operate" tag on it and report it to our supervisor.

Q When you are taking one our of service, do you put barriers up, or something like that?

A We pull the main switch, and if we got to work on it we barricade the top and the bottom of it.

Q So that people don't go on it; is that correct?

A Nobody can get on it.

Q By the way, when these escalators are moving up or down, it is true, is it not, that anybody could push the button and stop it?

A Anybody can.

Q Do you see the callsheet in front of you, sir?

A Yes.

Q Is there any indication on that callsheet that there was anything wrong with the B 7 escalator on April 13, 1975?

MR. COUSINS: Objection, your Honor, Again it speaks for itself and we know it doesn't.

MR. McMAHON: I am sorry, I apologize. I withdraw it. Don't answer.

THE COURT: Any other questions.

MR. McMAHON: No, sir.

THE COURT: Any cross?

CROSS EXAMINATION BY

MR. COUSINS:

Q Have you ever worked for Otis Elevator Company?

A No.

Q Have you ever been trained by them in the maintenance or repair of Otis' escalators?

A No.

Q Have you ever been trained by Otis?

A No.

Q Did you ever attend any schools or clinics conducted by Otis?

A No.

MR. COUSINS: No further questions.

REDIRECT EXAMINATION BY

MR. McMaHON:

Q How long have you been working on escalators?

A From sixty-four up until now.

Q Twelve years?

A Yes.

Q Do you know how long Mr. Russell worked on them before that?

A I found Russell working when I came on that job.

MR. McMAHON: Thank you.

MR. COUSINS: Nothing further, your Honor.

(Witness excused)

R I C H A R D S O V A, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DI RECT EXAMINATION BY

MR. McMAHON:

Q Mr. Sova, you are a New York State Railroad Patrolman, assigned to the Penn Central Railroad Company and on the payroll of the Penn Central Railroad Company; is that correct?

A That's right.

Q You are still employed, as Sergeant Kenwood, by the Penn Central?

A Conrail took over.

Q Before that you were employed by the Pennsylvania

Railroad; is that correct?

A That's right.

Q On April 13, 1975, were you assigned to Pennsylvania Station in New York?

A That's right.

Q You were called upon to assist a passenger who was injured on an escalator B 7?

A That's right.

Q At roughly ten after ten in the morning; is that correct?

A That's right.

Q When you got there, you asked her what happened; is that right?

A That's right.

MR. COUSINS: Your Honor, now it is important. I object to any further leading. He was the first police officer on the scene. I object to leading.

MR. McMAHON: I agree.

Q When you got there, where was Mrs. Monroe?

A She was supported by usher Cadogan and had one hand on the wall up at the top of the escalator.

Q Did you get a chair for her of some type --

MR. COUSINS: Objection. Your Honor, I object. This is getting critical. Can he ask him what he

did.

THE COURT: I don't know how critical it is, but why don't you just ask him what happened.

Q What happened then?

A I got a wheelchair for her so she could sit down to relieve, you know, so she could sit down while waiting for the ambulance.

Q Would it have made any difference to you whether you got a wheelchair or some other type of chair?

A No, none at all.

Q When you did that, did you ask her what happened?

A Yes, I did. I asked her for her name, address, and what had happened.

Q Did you make a report of what happened?

A Yes, I did.

Q Is that in front of you there?

A That's correct.

Q That's in evidence, so we won't go over it again. Mr. Sova, Patrolman Sova, after Mrs. Monroe was taken to the hospital, what did you do then?

A I examined the escalator and area around it, road the escalator down and to he top, and found it to be in proper working order.

Q Then what did you do? Did you leave the area?

A I went to make up the report, yes.

MR. McMAHON: Thank you very much.

CROSS EXAMINATION BY

MR. COUSINS:

Q Patrolman Sova, you say you rode the escalator down?

A That's right.

Q Was Mrs. Monroe still there when you did that?

A No, she had gone on the ambulance.

Q So this was some period of time later?

A A few minutes later, yes.

Q Do you have any training in the inspection or maintenance of escalators?

A No.

Q Did you attempt to contact anyone from the maintenance department of Penn Central to come down at the scene of the accident when it occurred?

A I attempted to contact them to have them inspect the escalator, but I couldn't contact anyone.

Q In other words, no one from maintenance came on Sunday?

A The only one that came was Allied Maintenance to inspect to see if it was clear.

Q Allied keeps the station platform clean?

A That's right.

Q They have nothing to do with the maintenance of the escalator?

A That's right.

Q Were you able to get any one to come down from maintenance?

A No, I wasn't able to contact any one.

Q You weren't able to get any one on the phone?

A No one answered the phone.

Q In other words, there was no one there from maintenance?

A They were somewhere in the station, but no one came to the scene.

Q Do you recall testifying that there is no one there from maintenance on a Sunday?

A I don't recall.

Q Approximately what time did you take your ride on the escalator?

A I would say approximately 10:20, 10:25, something like that. I don't recall the exact time.

Q Did you turn the escalator on or have it turned on for the purpose of your test?

A I turned it on.

Q You turned it on? When you first got to the scene of the accident, was the escalator running or stopped?

A As I recall, it was running. I don't recall for sure.

Q You don't recall for sure??

A No. I believe it was running, but I am not sure.

Q When you first got to the scene of the accident, was the train still in the station, the 161 train to washington?

A I really don't know. I believe so. I was at the top of the stairs and I could not see the platform.

Q Do you recall testifying under oath at your deposition that the train was gone by the time you got there?

A No. When you asked me if I had obtained any witnesses' names.

Q No sir, I am asking you a specific question. If you testified under oath --

THE COURT: Do it in a proper way, if you

think it is necessary.

MR. COUSINS: I will come back to that, just to save time. I know you want to finish today.

Q Is part of your job to get witnesses to an accident?

A If they are available, yes.

Q It is part of your job whether they are available or not? It is part of your job?

A To attempt to, yes.

Q Did you make any attempts to interview any of the witnesses or speak to any of the people who witnessed this accident?

A I couldn't locate them.

Q Did you attempt to?

A I did attempt to.

Q The train was still there when you arrived, wasn't it?

A But there was no one to take care of Mrs. Monroe, had I gone down.

Q But when you first arrived, the usher was helping her up? He hadn't yet taken the passengers to the train --

A He started to load the train on the other side of the train concourse.

Q That wasn't until after you arrived, isn't that true?

A Until I arrived, right.

Q So when you first arrived, there were people there and he was holding Mrs. Monroe and helping her stand up and her leaning against the wall, isn't that true?

A That's true, but the people were there, I asked if anyone saw the accident, and none stayed.

Q When you asked them, they all just turned around and left?

A Yes. Most left. I asked anyone who did see it to stay.

Q Did you take the usher's name at the scene?

A I knew the usher from working there. I didn't take his name.

Q You knew who he was.

A I knew him from working there, yes.

Q Did you take a statement from him?

A No, I didn't.

Q Did you participate in any investigation to determine how Mrs. Monroe's foot got caught in the escalator ?

A No, I didn't.

Q To your knowledge, did anyone from the whole Pennsylvania Railroad Company?

A Not to my knowledge.

Q Did you attempt to learn how Mrs. Monroe was brought -- or who brought Mrs. Monroe up to the top of the escalator?

A The usher said some passengers did and he did. I don't know.

Q Did you attempt to identify those passengers?

A They were gone.

Q How did you know they were gone until you asked around?

A I asked people who saw the accident to remain?

Q Did you go down to the train that was still at the station --

A By the time I got the wheelchair and had Mrs. Monroe and the ambulance summoned, the train was left.

Q Wasn't it your partner Mr. Alonso who got the wheelchair and not you --

A He went to get the wheelchair. Mr. Cadogan needed assistance to hold Mrs. Monroe up.

Q By this time Sergeant Kenwood was there, wasn't he?

A He came shortly after she was seated in the chair.

Q And Rockefeller came?

A They came after she was seated in the chair.

Q You weren't alone at the scene, were you?

A For a time I was, yes, sir. With the usher.

Q In moments you had a number of police officers there. Did anybody else go down and see if they could interview or determine who had helped her or seen the accident?

A Not to my knowledge.

Q Do you recall testifying on page 37 of your deposition, on October 9 of 1975, the year in which the accident occurred:

"Question: By the time you got there, was the 161 train to Washington still there? You testified under oath, "No, it was gone."

A As far as I knew it was gone when I got there. I told you, I couldn't see the platform. I assumed it had left.

Q Your best recollection now is that you don't know whether it was gone or not?

A I don't know if it was gone or not.

MR. McMAHON: Objection. Whichever way Mr. Cousins wants it, I will take it, your Honor, whether it is gone or --

MR. COUSINS: I think that is uncalled for, your Honor.

THE COURT: Yes. That's not a ground for objection.

Q In either case, your present recollection now is you don't know whether it was gone or not?

A That's correct.

Q Is it yourpresent recollection now that you don't know if the escalator was running or not when you got there?

A I believe it was running, but I am not sure.

MR. COUSINS: Nothing further, your Honor.

THE COURT: Thank you, Mr. Sova.

(Witness excused)

MR. McMAHON: I have Lieutenant Rockefeller here. I offer him.

THE COURT: Let's not do that. Do you have any other witnesses to call?

MR. McMAHON: I will put Lieutenant Rockefeller

E D W A R D R O C K E F E L L E R, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. McMAHON:

Q Lieutenant Rockefeller, are you employed by now Conrail?

A Yes, sir.

Q You were employed by Penn Central Transportation Company?

A Yes, sir.

Q And before that by the Pennsylvania Railroad Company, is that right?

A Yes, sir.

Q You are now a lieutenant in the New York State Railway Police, assigned to the Conrail and paid by Conrail?

A Yes, sir.

Q Lieutenant, you were on duty, I take it, On April 13, 1975?

A Yes, sir.

Q You had Patrolman Sova in your command?

A Yes, sir.

(Defendant's Exhibit D was marked for

identification.)

Q When you got to the scene of B 7 escalator sometime during the morning of April 13 --

A I did.

Q Did you see a woman in a wheelchair or some other type of chair?

A Yes. I seen a woman in a wheelchair, an elderly woman.

Q Is she in the courtroom today?

A Yes.

Q Do you remember?

A That would probably be her with the cane, to my recollection.

Q Did you have anything to do with her at all?

A No. I had no conversation with her. Only what Patrolman Sova, just to make sure he had the proper information of the accident and what happened.

Q Did you satisfy yourself that he did?

A Yes.

Q Suppose, lieutenant, that an escalator was reported in some way defective to you, what would you do?

A It would be turned off.

MR. COUSINS: Objection. We know it wasn't reported. What relevance does it have?

THE COURT: Yes.

MR. McMAHON: Actually, I have no further questions.

THE COURT: I don't know why you called this witness. You are excused. The testimony is stricken from the record. The jury will disregard it. Don't call witnesses who have no evidence for you to give.

(Witness excused)

THE COURT: Call your next witness, please.

MR. McMAHON: I have no further witnesses.

THE COURT: You rest?

MR. McMAHON: Yes, sir.

THE COURT: Take ten minutes, ladies and gentlemen.

(Jury not present)

MR. McMAHON: By your Honor's actions, I will not offer any other witnesses, but I can state this: I put this witness on just because his name was mentioned as being in the vicinity of the accident, period. That was the only reason.

THE COURT: You have been practicing in this

courthouse long enough to know that that is no reason for a member of our bar to take up our time putting somebody on the stand. If a demand had been made of you or any questions was raised about his absence, that's one thing. But we are too busy to have anybody whose name is mentioned put on the witness stand.

There are a lot of other names that were mentioned, and I deeply thank you for not hauling them in here to put them on the stand.

MR. McMAHON: I am not going to.

THE COURT: I will hear motions.

MR. McMAHON: Your Honor, I'd like a direction to the plaintiff's counsel not to mention the fact that I didn't produce witnesses.

THE COURT: Are you going to mention he didn't produce witnesses?

MR. COUSINS: Dr. Balenzweig, yes. I have a right to.

THE COURT: What about Dr. Balenzweig?

MR.McMAHON: I am not going to bring him in here.

THE COURT: Let's not mess around with trivialities on a hot summerday. The only point about

your medical testimony is it is uncontradicted. And it is uncontradicted. I don't see why you should make any point of witnesses who are not here and invite him to do this charade some more.

MR. COUSINS: I would just like to mention that it is uncontradicted.

THE COURT: You may do that.

Do you have motions, Mr. McMahon?

MR. McMAHON: Yes, sir.

THE COURT: Move.

MR. McMAHON: Your Honor, the defendant's trustees of the Penn Central Transportation Company, Blanchette, Bond and McArthur, move for a dismissal of the complaint, directed verdict in favor of the defendants, on the following specified ground: One, the defendant has failed to prove by a reasonable preponderance of the evidence the negligence of the defendants in any capacity in the maintenance and operation of this escalator. All that we have is the statement of a 78 year old woman, and I certainly am the last to cause any -- seemingly be disparaging as to that, but we have the statement that she was on an escalator and the handrail went back and/or the steps went back, I am not sure even at this juncture which it was, but in

any event, she didn't fall down, she merely leaned backwards.

Against that we have testimony that the escalator operated properly on the 12th, operated properly on the 4th, there was no complaint about it on the 13th, which was a Sunday, it operated thereafter during that day because the light was on and the trains were loaded from that platform, from that concourse down to the train platform, we have a preponderance of the evidence that there was absolutely no negligence on the part of the railroad in the maintenance and operation of that escalator.

There is one other thing that stands out, and I don't mean to belabor the issue. What was the cause of the fractured ankle? There was no hypothetical question asked, and I am not so certain how it would have been answered, but there was no causation offered with respect to even catching her foot, and I don't know to this day where her foot was caught on the escalator, there was no medical causation sought after, pleaded or proved.

THE COURT: It is almost difficult to believe that she actually broke her ankle, isn't it?

MR. McMahon: I know she did that. To this

day and even after the doctor got on, I don't know how it was done, and I bet neither does the doctor.

THE COURT: Maybe the jury will figure it out.

MR. McMAHON: All I can say is one thing more. This escalator was inspected on two occasions; once before and once after, and I am entitled at least to a charge on that score, that the jury could presume or even conclude that the escalator operated properly on the middle day.

Judge, there is one other thing. During this trial, I know that perhaps I acted in a manner that was sometimes difficult to perceive by your Honor, but you have to realize that everytime Mr. Cousins asked a question and an answer was made, he would repeat that answer and follow it up. When the questions were asked by deposition, the inflections don't appear on the page but the inflections appeared in the voice of the person, Mr. Cousins, reading it, the questions and answers.

So if I did seem a little bit upset about that, and I was, I certainly apologize to the Court, because I think that your Honor finally, without my saying anything, said, you know, "please, Mr. Cousins, stop it." I do apologize on that score.

But I have been around here a long time, I know that, and I think this, that -- and I have tried escalator cases before. The burden of proof is on the plaintiff to show negligence on the part of the defendant, not by two people from Otis Elevator Company, not by somebody other than those connected with the railroad, but by concrete evidence.

This is what they did wrong: They have not pointed out the one thing that this company or the trustees did wrong in the operation of the B 7 escalator, not one shred of evidence. They have gone beyond the point of res ipsa becasue they have tried to offer proof of negligence. There perhaps they have made a mistake. But there wasn't one thing here, and res ipsa, I take it, is out, not one thing here that indicates to the jury -- to me or I think to the jury that there was a shred of negligence in the operation and maintenance of this escalator by the company.

Thank you.

THE COURT: As to the apology, it is, of course, accepted. In the heat of advocacy these things happen. My admonition to Mr. Cousins was given for whatever it was worth, and now let's get the case to the jury.

Motions are denied. I will rule on the requests so that you can be guided for that purpose in your summations.

Are you ready for the rulings?

MR. McMAHON: Yes, sir.

THE COURT: What were you up for?

MR. COUSINS: In the present posture of the pleadings, they have raised the affirmative defense of contributory negligence. In as much as there was not a shred of evidence that she was doing anything improper --

THE COURT: I don't know that that is an affirmative defense. Has the law of New York changed?

MR. COUSINS: No. Under the Federal laws of --

THE COURT: Let's handle that in the requests. I am going to deny the request with respect to contributory negligence. I agree there is not a shred of evidence.

MR. McMAHON: Your Honor, if she felt this handrail going back, she could have loosened up on it easily.

THE COURT: I am ruling. You heard the defense. You could have loosened up on it easily because

you are agile, quick-witted and you have tried other escalator cases. If you are going to call that contributory negligence, you are going to have to go to a higher court for that. I am ruling on plaintiff's requests, gentlemen.

Number one is granted in substance -- one through 6 of the plaintiff's requests are granted in substance. Seven is denied. Eight is granted in substance. Nine is denied. The remainder of plaintiff's requests are granted in substance.

Defendant's initial requests to charge, number one is granted in substance, the same with number two. Three is denied, four is denied. Five through nine are denied -- sorry. Five through nine are granted in substance. Ten is also granted in substance. Also eleven. Twelve is denied. There are two supplemental additional requests to charge from the defendant, both of which are denied. As I have told you in the course of the trial, Mr. McMahon, those are propositions that you may argue to the jury, but I will not charge them as a matter of law.

How much time do you need for summation, Mr. McMahon:

MR. McMAHON: I don't know. I haven't prepared

it yet, sir.

THE COURT: I am going to give you a few minutes to prepare. Give me your estimate.

MR. McMAHON: No more than twenty minutes, I guess.

THE COURT: Mr. Cousins?

MR. COUSINS: No more than thirty, and I will try and be less, your Honor.

THE COURT: What I propose to do, gentlemen since it is only ten after four, is give you both ten minutes,have you sum up, and I will charge the jury and then send all eight of them home and make sure we don't lose any of them in the morning and have them in to start their deliberations at 9:30.

Is that agreeable?

MR. COUSINS: Fine, your Honor.

MR. McMAHON: Do you want us to take our exceptions now to the charge?

THE COURT: I thoug[illegible]ou except as you went along. You have an exception to any that I denied. Isn't that reasonable

MR. COUSINS: I think that is standard procedure, your Honor.

MR. McMAH[illegible]N: No, that is not standard procedure.

THE COURT: You have an automatic exception to any that I deny. I am so ruling. You may put in a copy of your requests, my rulings are on the record, and all the denials that you want to except to you have already excepted to, plus those you don't want to except to.

MR. McMAHON: I want to additionally call your attention to the additional requests A and B, and I respectfully except to those.

THE COURT: I know. You have an exception to all of them. Let's take your ten minutes and then we will sum up.

(Recess)

(Jury present)

THE COURT: Let me tell you where we stand, ladies and gentlemen, and then we will go ahead. You have now heard the evidence in the relatively short trial. It is only four o'clock and it is hot out, and it is comfortable in the courtroom for the time being, so we thought we would finish everything except your verdict. That is to say, the next step in the case is, as you probably all know, an opportunity for both attorneys to sum up, to argue there respective positions as to what they claim your verdict should be, and then for me to

instruct you on the law, which is not very complicated in this case, and then for the case to go to you. We will go through the summations and I will give you the instructions this afternoon, and we will suspend then and ask you to come back first thing in the morning to begin your deliberations at 9:30. That should get us out not too much later than the normal closing time for this Court.

MR. McMAHON: Thank you, your Honor. Over here on the table are the exhibits which I consider important, at least to my way of thinking, and over here are the balance of the exhibits. Of course you are entitled to look at anyone or all of them, as the case may be. For my part, it was a quick trial, and I hope that you don't leave here with a feeling of some frustration, because some of us operate one way and others operate another in the practice of law and in presenting a case to a jury.

Obviously Mr. Cousins' way is different from mine, and I like to put the witness on, prepare him ahead of time or her ahead of time, have him prepare me, so to speak, know what questions I am going to ask him, and the answer, of course, comes back. That's why I am perhaps able better than others to not belabor. Although,

of course, I am not critical of the other operation, you know, you people, you folks, are the ones that must decide the case. We can only suggest, and I wouldn't think of telling you you must do this, you must do that, you must do this, because if a lawyer does that, he is not performing his function. He is only an advocate.

As the judge first told you, our words are not evidence. When we ask long-winded questions and don't get an answer to them, forget about it. They don't mean anything. What does mean something here? Mrs. Monroe was a passenger of the trustees of the Penn Central Transportation Company. She was intending to take a Penn Central or Amtrak train to Washington, D.C. She came to the Penn Station from the Long Island Railroad. That was the day the Long Island elected to operate on time. She got there early, and she had her breakfast, and she waited in the waiting r , she went over to Mr. Cadogan and said, "Is the train going to leave from this track," the answer was yes, he put on the light, he turned the key or he pushed the button first and then turned the key because he had to change the direction, you recall the escalator was ascending, and then he had it going down, he looked at it, it was running properly, and

he said, "Okay," he stepped aside eight feet and the passengers went down on the escalator.

He knew that Mrs. Monroe was not the first on the escalator. He didn't know who was the first on the escalator. He didn't know how many people were in front of her. But he knew there were some people in front of her. He knew this, too, that the escalator was operating properly when he looked at it that morning. There was nothing wrong with it. You heard from his deposition, which was read yesterday, that he can tell when it is not functioning properly because of the click in it, and I will come back to that a little bit later. If he heard that click he would turn it off.

Mrs. Monroe got on the escalator, and as he stepped back eight feet or so, he heard somebody shouting something that called his attention to the fact that something was wrong, he looked down and he saw a woman fallen over on the escalator, fallen. That is also important, because her testimony here was and the other side of the coin was that she didn't fall, you know, she herself is the only one who said that, she didn't fall.

He saw her fallen over on the escalator. He stopped the escalator and he got the people that were

behind Mrs. Monroe off the escalator, and he went down and assisted in getting her off that escalator up to the top. A patrolman was going by and he signaled to him in some manner to get some help, and a chair came. I don't care whether it is a wheelchair or an armchair or a straight-back chair, and I am sure Mrs. Monroe didn't care what kind of a chair it was. She just didn't want to stand anymore.

So all this cloudy area that we have here, forget about it, if you can. I am just suggesting it to you now. I am not telling you what to do. Just please forget about it. Then what happened, Patrolman Sova comes up and relieves Mr. Cadogan. Mrs. Monroe herself said that the chair was placed right in front, I believe, and you can take issue with me if I am wrong, I believe she said, and your recollection of the testimony controls, not mine, that her chair was placed in such a manner that nobody could go down or use the escalator. I am not sure of that, but I think that's what she said.

Anyway, the escalator was turned off to get her up. What to do with the balance of the passengers? There is another stairway across the concourse. If you have ever been in Pennsylvania Station, that concourse, it

has been refurbished so many times, I believe, I think still now there is the East Gate, which is where the escalators are; and the West Gate. The East Gate would be near the Horn & Hardart area, I believe, as Mrs. Monroe testified. All they had to do was walk them over to the stairway on the other side of the concourse, and it is just from here to there, I don't know, nobody said how far it was, but it isn't all that far away, and down they go.

By the way, he performed his job, that was his job, to see that the passengers got on the train, and he did. Then I believe he said he closed the train out at that stairway, back at the escalator, and thereafter, I am just going by sequence, Mr. Sova -- Mr. Cadogan had other duties -- Mr. Sova testified that he ran the escalator up and down to see if there was anything wrong with it. He found nothing wrong with it whatsoever.

It is true that he is not a mechanic or a maintenance man, he is not as expert as Mr. Russell or Mr. Jackson, but I think that if you ride an escalator up and down, you stop it and reverse it and ride it up again and it works properly, that's fine. But if it doesn't work properly, you could tell. It would be his

obligation to report it. You have to think about that, reporting something. I am asking you now to draw inferences on your own good common sense.

It would serve no purpose for Mr. Russell or Mr. Jackson or Mr. Cadogan or Mr. Sova to report that everything was all right or not to report -- put it this way: not to report a defect. The reason for that is obvious. The four of them are inextricably entwined in the taking care of the traveling public. They are responsible for everyone of you and me when I travel on those trains. If there was something wrong with that escalator that could cause an accident, it would be their obligation to have it taken out of service by a barrier or by some other method to show that it was down.

Do they do this? No, they did not. Why didn't they do it? Because there was nothing wrong with the escalator. As a matter of fact, Mr. Cadogan said, even after Mr. Sova had ridden the escalator up and down, he said that as far as he knew he saw the light, if you recall the light indicating --during the balance of the day, every so often, the light was on, indicating that this train at that track at that time that is servicing platform 7, the B 7 escalator, was operating, and

that would indicate to him a train was down there ready to receive passengers.

What does that all mean? It means simply this, and I better back up one minute: On April 12 Mr. Jackson testified, according to the Otis Maintenance checklist, that everything was in good working order, they are lubricated and oiled regularly, that the chains are checked, the gears are checked, the machinery is checked -- he has been there twelve years working on escalators. He said that Mr. Russell was there when he got there. They are all machinists, in the same lodge, I.A.M., International Association of Machinists, journeymen. I understand there is some -- I think one of the Otis people brought that out, they have to have some expertise or be expert in mechanics, these men deal in this stuff daily.

That is their job. The elevators and the escalators in Penn Station, the same type of escalators, day in and day out, the same elevators, day in and day out. Who knows those escalators better than anybody else? Otis? Not on your life. Mr. Jackson and Mr. Russell know those escalators and those elevators in that station better than anybody because it is a daily routine job to them and they are expert mechanics.

As a matter of fact, I believe there was testimony that the railroad since 1937, or at least from '42 when Lou Mandia was on the job, they took care of their own escalators, day in and day out, repaired them, maintained them, and so on. That doesn't mean to say that they are all in perfect operating condition, because sometimes they require repair.

That's what these men are there for. What I am suggesting to you is that this escalator on the 12th, 13th and 14th required no repair. When I say escalator, I am including the railing. I know that we bought a railing and installed it in January of 1974. As I recall opening statements, I mentioned to you that you can hold me to whatever I say, and, by the same token, you can hold Mr. Cousins to whatever he said.

That wasn't a couple of months on the B 7, if it was in fact the B 7, let's just say it was, because I had some discussion of that, that railing wasn't purchased and installed a couple of months before April 13, 1973. It was installed one year and several months, three months, before this accident. But the railings are checked on the 12th, the railings are checked on the 14th, there was no bad order on the callsheet for the 13th, which was a Sunday.

I am asking you to assume that there was nothing wrong with the escalator on the 13th when Mrs. Monroe rode on it. These sheets are all in evidence, the call sheets and the inspection reports, signed by Mr. Jackson and Mr. Russell, the orthopedic and Allied Specialty Clinic report of Dr. Joseph Kaye is in evidence. You might ask yourselves, "Where did he do that?" I can answer that very simply. By the way, if I don't answer something that Mr. Cousins says in his summation, perhaps I can hire one of you as my lawyer so when you go inside you can give the answer for me, because I have to anticipate a little bit, but I can't anticipate everything.

I am satisfied with Dr. Kaye. I want to tell you why. When I examined Mrs. Monroe before trial, the deposition, as you heard, she had absolutely no orthopedic problems whatsoever except for a spurring on one foot and which had been removed by operation. Then we discovered that she had a spurring on another foot which she had removed a couple of years later. Then we discovered that she was being treated by her doctor in Alexandria, Virginia, Dr. Joseph Kaye. for arthritis. It is just as simple as that.

I didn't ask Dr. Papas what these injections meant, I should have, but I didn't, it just slipped my

mind, but, in any event she had two injection each into both knees, and that was for some reason or other -- I mean her knees weren't normal. That brings me to mind as to whether she used her good ordinary commonsense in going down and using an escalator. I don't know. That's for you to determine. I could prolong this for another day. I could bring in the doctor who examined her, but what is he going to tell you? He is going to tell you the same thing that Dr. Papas said --

MR. COUSINS: Your Honor, I object to that. I think it is improper to comment on someone who has not testified --

THE COURT: Yes, let's not talk about witnesses who are not here. Dr. Papas' testimony is uncontradicted, it that's what you mean. Just say it.

MR. McMAHON: Absolutely.

THE COURT: Let's not speculate about what somebody else may have said if you called him.

MR. McMAHON: Can I tell them I concede that she has a trimalleolar fracture, she was placed in a walker, it is in the hospital record, she went from there to a cane. That's it. I just can't -- I have nothing t combat that. I wouldn't presume on you to do

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that, to drag it out any further.

But I do say this: was there a question asked of Dr. Papas, was the one question asked of Dr. Papas as that would indicate to you or anybody else that the method that Mrs. Monroe described her accident, the modus operandi, so to speak, was the cause of the trimalleolar fracture.

MR. COUSINS: Again I object. He had cross examination. If that was something that should have been brought out, he could have asked.

THE COURT: I don't see any point in arguing about questions that were not asked. The doctor didn't have testify to that. If you want to argue about the sufficiency of the evidence to show cause or proximate cause, subjects on which I will briefly instruct the jury, you my do that. There was testimony on that subject. But don't argue about the non testimony on that subject. I have ruled on that question.

Please proceed.

MR. McMAHON: Thank you, your Honor. What I am trying to do is get across the important part that the mechanism of the jury played because there is no question in my mind, to my recollection, but again your recollection controls, that Papas said that she fell.

I believe he added later on pursuant to Mr. Cousins remarks or questions, she caught her foot and she fell. If she didn't fall, how did she break her ankle? I believe he said directly the way that she broke her ankle was that she fell. She is telling us she didn't. This is my total recollection of it, and it may not be yours, but it is what I glean out of the evidence and what I glean out of what Dr. Papas said.

Remember, each one of the railroad personnel and the hospital record indicated to you and indicated on this trial that Mrs. Monroe fell on an escalator. Mr. Cadogan saw her in a fallen position on the escalator. What caused her to fall? He saw her crouched He didn't describe her. I shouldn't do that. He saw her crouched He saw her fallen. That's when he shut off the escalator. What caused her to fall? Perhaps because she was seventy-seven or seventy-eight years of age? I don't know. Because the bag was too heavy? Because she was unsteady in her legs? I don't know but I do know, and I ask you to really think about this, that the operation of that escalator was, in quotes, good running condition, close quotes, in proper operating condition. The testimony on that was overwhelming.

As a matter of fact, there isn't the slightest

suggestion of direct testimony that that escalator was operating in any other way but in good operating condition. Even the Otis people. Nobody asked to examine that escalator to see how it worked. You heard nothing about that. The Otis people didn't go there and examine it for the plaintiff. They came and testified on her behalf. They talked about maintenance. We do what they ask. As a matter of fact, we probably do a better job at it. We don't use them. The escalator worked for Mr. Cadogan, Mr. Sova, the other trains that left on that day, it worked on the 12th and it worked on the 14th.

I'd like you to bear that in mind when you go to the juryroom. I'd like to say this, that again, we all have different modus operandi of not only running escalators and practicing as physicians andtrying cases -- If I can get along with Mr. Cousins and I can certainly get along with the Court, but at this juncture it is not the court that is important nor Mr. Cousins or myself. You folks are. If I have done or said anything during the course of this trial that is in any way, even the slightest, offensive to any one of you, even the slightest, I ask your humble forgiveness and ask you, please, not to hold it against my client. Thank you very much.

MR. COUSINS: May it please the Court, Judge Frankel, Mr. McMahon: When this trial began yesterday morning I made very careful note of what my colleague said to you regarding the Penn Central's attitude in this case and this accident, and there were two exclamations made right at the beginning of this trial. They want to know the cause of this accident and they want to prevent it from happening again. I wrote that down. I then read to you the testimony of Patrolman Sova who had a memo book, which all police officers have, before the accident, he has had one since the accident, but he just did not happen to have with him at the time of this accident.

Mr. Sova was also the first man on the scene who also tore up and discarded his original notes, who did not show them to a lawyer. This is the Penn Central who had a Lieutenant of the police force there who had a memo book. We never saw his. Sergeant Kenwood had one. Didn't see it. The superintendent of structures, Mr. Cadogan, the top man there, in their zealous desire to discover the cause of the accident, determined that no investigation was conducted because none was necessary.

Yet, from the usher to the first police officer on the scene, the superintendent of structures,

there is not a soul in the whole Pennsylvania Railroad Company who has the slightest idea of what caused this accident. I submit that it could not possibly, to my way of thinking, be the type of operation or attitude of people who want to know the cause of an accident to a woman passenger on a train to whom they have the duty of a common carrier or would be of the slightest help to either the railroad or this community or anyone else who travels our trains and uses Penn Station to prevent this from happening again.

It matters not to me and I assume anyone else in this room whether Penn Central wants to maintain their own escalators or have professionals like Otis do it. I find it hard to believe how anyone can be more qualified than Otis to maintain their own escalators. They design it specifically for this installation. In fact, they designed and installed themselves the entire twenty-eight escalator installation at Penn Station.

It really doesn't matter. The law doesn't say you have to have someone else maintain your escalators. The law says that they must be maintained by competent people who know what they are doing and who do it carefully. We listened to a whole entourage of witnesses from Penn Central tell us that they check the lighting, which

is nice, except that it has nothing to do with the case, They checked the steps to make sure that the treads were, as Mr. Mandia said, the cleats are not broken, which is very nice, except that had nothing to do with the case, he checks to see if there is water at the top and bottom of the escalator, I suppose it doesn't take an engineering degree to do that, and he checks to see that there is nothing slippery in the area on which one can slip or fall.

That is well and good. But what we haven't heard any testimony of is what Otis recommends that be done specifically to make sure that the slippage or binding of the railing doesn't occur. That's something that you are not going to tell from looking at the steps and seeing if there is water in the area. There is very specific maintenance and checking set out by Otis, and it doesn't matter whether it is done by Otis pursuant to contract or by Penn Central. What is important is that be done and that it be done carefully.

In my entire life I have never seen a railing stop on an escalator, Mrs. Monroe never has, and I suspect no one on the opposite side of this railing never has, because generally in our experience we know that when escalators are properly maintained, and we use

everyday of our life, steps go in the same direction as the railing and both railings and steps move approximately at the same speed. We know the consequence of faulty maintenance and what could happen to someone if a railing stops, a person is holding on to it and the steps keep going.

We know all too well tragically what happens when something happens. We are going to conclude this case today and we have only a limited time to do that, but you have all the time you need in the jury room tomorrow. One of the things you will have with you is Otis' Maintenance Manual and checklist. I won't take the whole time to read it now, but I was glancing through it during the course of this trial. Just some of the items that you could not possibly detect from a visual inspection of this escalator is set forth right in the Otis chart which we either can infer they were not done by Penn Central or if they were done they were not being done very carefully.

On this yellow page, checkchart for escalators, it says specifically, check all upper landing rail sheave bearings. That is not something you can see from a visual inspection. They are internal.Check the sprockets. That is in the parts catalog. You have seen that.

You can't see that from a visual inspection. Lubrication. Something that no one has testified to because it is probably not done, probably because the people who work on these escalators don't know it, the following.

Check handrail tension devices on the yellow page, right here, there are numerous references on every single page to specific internal integral parts of this escalator. There is a reason a handrail slips. It is because, assuming it was properly installed, and that was done by Penn Central, proper installation is not enough. Continuously in the maintenance of the escalator the handrail spring tension device must be adjusted. It must be adjusted not after the horse got out of the coral and someone is injured. It must be adjusted periodically, it must be checked.

You don't look to see if the handrail is properly adjusted. You have got to stop the escalator, grab it and yank it down and see if there is any play or give in it. That's the only way you are going to know if there is proper tension. You have to do it on both railings. I have heard no testimony whatsoever of any of those inspections being done, either before or afterwards.

Mr. Mandia told us that there is someone from the maintenance department on duty every single day,

including Sunday. Mr. Sova's own report on Sunday distinctly says, "No maintenance available." He couldn't even get someone on the phone to come down. This is a maintenance company that's there everyday of the week to take care of their escalators? This is a maintenance company that doesn't even bother to come down and find out how or why the accident occurred or how to prevent it again?

I don't want to go through Sova's deposition to find the place where I read to you where he distinctly said there are no maintenance personnel in Penn Station on Sunday, but tomorrow, if there is any doubt in any of your minds that I read that, we will be happy to read it back to you. I don't want to take the time on summation to do it, but anything you would like be read back to you, the Judge will be happy to do it, if you ask.

Why was time so important in this case? I took great pains to the time schedule here . This was a ten o'clock departure. Obviously if there was an accident or mechanical delay or something else, the train would be late. It is certainly not going to leave before the scheduled time. The Penn Central, in fact,any department store, they have guards, they are private, they

work for the railroad, they work for Bloomingdale's, what have you. They are trained to get witnesses, they are trained to get any witnesses certainly that might --

MR. McMAHON: Objection.

MR. COUSINS: That is from the testimony.

MR. McMAHON: Bloomingdale's guards.

MR. COUSINS: I am talking about Penn Central, all guards. I specifically asked the question, is it one of your important jobs to get witnesses. Shall I read it again? Page 36:

"Question: Whose job is it to locate any possible witnesses? Is that one of the police functions? Answer: That's correct.

"Question: To your knowledge were any witnesses identified? Answer: No. Not to my knoweldge.

"Question: Did you learn the identity of the people on the escalator who had brought her to the top? Answer: No, I didn't."

But we know that the usher was assisted by at least two people in carrying her after shutting the escalator off. Are people going to be so kind, a man extricates her foot caught in the escalator, help carry her up, assist the usher, be so cooperative, and then when a policeman comes over and says ,"What happened,"

they are going to run away? That won't cut ice. There had to be a better answer. That was a changing around of the time sequence. Mrs. Monroe was the first person on the escalator. With all the pulling of teeth, Mr. Cadogan doesn't know who the first person was, didn't watch the first person get on and doesn't know when Mrs. Monroe got on. All he knows is that when he finally got down there after the accident was over and the people were on all sides helping her, one or two people were further down, obviously the man who was getting her foot out had to pass her by, extricate her foot.

That's no indication or proof of anything as to where that person was standing before the accident occurred. More than likely he was standing behind her. Although I wasn't there, he was more than likely the person who said, "I'll hold you," until the usher came down to help. Mr. Cadogan never said she was not the first person. We heard like she could have been. We know that's not true. This accident occurred when there were dozens of witnesses there. This is a train that was going to Washington at ten o'clock and Mrs. Monroe was not the only passenger on that train. There were other people standing right there at the top waiting to get on.

The boarding of the train started at about a quarter of ten. Mrs. Monroe was the first person on that escalator. If Mr. Cadogan is correct, and I have no reason to doubt him, he said she was injured at about seven steps from the top to the bottom, he said that was a third or so. Obviously that is twenty-one steps. She is about a third of the way down. How long does it take an escalator, and some of you I think have ridden escalators at Penn Station, how long does it take an escalator to go seven feet? An escalator moves maybe a step a second? That's pretty slow, or maybe two steps a second. That we know from our own common experience.

So if she got on the escalator, she said it was a little later than 9:45, I think she said it was twelve minutes to ten. Let's accept that. The usher said it was exactly a quarter of. It is not important. Within that three-minute area. The accident happened sometime between a quarter of ten and twelve minutes to ten, allowing for both reversings. No one had to call the police on the telephone. The usher or another usher right there shouted, "Help," and Mr. Sova heard that. He heard the shout. He was right there. He had to be close enought to hear it. It is an enormous terminal, Penn Station.

Mr. Cadogan himself said that the police officer was there within a minute to at most two minutes. We just heard that not two hours ago. So the police are at the scene. Not after the train left, as Mr. Sova had testified under oath at his deposition last year, but while the train was there. Not only while the train was there, but you must recall that Mr. Cadogan was helping hold Mrs. Monroe up, helping her stand, she was leaning against the wall. He did that until the police arrived. We know he shutdown the escalator. He said that. He shut the escalator down to go down and get her and bring her back up. We also know later from Mr. Sova, he said he took a little ride on the escalator after she was on her way to the hospital and everything was over, and he himself turned the escalator on.

If Mr. Cadogan turned it off at the time of the accident and at about 5:25, which is what Mr. Sova said, he turned it back on to take a little test ride on it, obviously that escalator was shut off. So contrary to what he swore to under oath at his deposition, when he got there the escalator was not running, it was still shut off, because Mr. Cadogan had shut it off. Likewise, the passengers were all there because with the escalator being shutdown Mr. Cadogan testified that he had to take

the passengers to the other end to take them down an alternate course. He didn't do that until the police arrived so they could get the chair, be it a wheelchair or regular chair, and take Mrs. Monroe off her hands and then he could see to taking the passengers to the train.

So all this adjustment time had to be made to account for the fact that there were supposedly no witnesses to this accident. There was only one reason for that, because all the witnesses to this accident, which is a most unusual one, all corroborated Mrs. Monroe's testimony about what happened. If there was one person who said she was pushed, she fainted, and I have been involved in cases where they have that, there would have been witnesses, we would have heard contradictory testimony, there would have been something different in the hospital record, and I haven't even read some of that.

Take that into the juryroom with you, where the account of the patient's version is given as completely consistent with exactly what she told the police officers at the scene, what she said at her deposition and what she testified to here in court.

Now that Mr. Sova is in court instead of a lawyer's office, instead of being absolutely positive

that when he arrived on the scene the train was gone, now he is not so sure. At his deposition he was absolutely positive the escalator was running when he got there. Now, "I think it was but I am not so sure."

Certainly Mr. Cadogan cares less. Why did it matter to him if the police came before the train left or after the train left. Why should it matter to him if the police arrived before the escalator -- while the escalator was stopped or while it was running. It doesn't. It only mattered to the people whose job it was to get witnesses if they are favorable to the railroad. That is not the New York State Police, not the New York City Police Department, but the private police officers hired and employed by the Penn Central Railroad, who bid on a trip seniority system to get to Penn Station instead of the Kearny yards, to get witnesses when they are favorable to the railroad.

There are no witnesses favorable to the railroad and that's why we are told there are no witnesses. Not because the train had left and not because everybody ran away when the police officer said, "What happened?" We are not dealing here with a lone police officer with a problem, one woman to take care of. First of all, the

entire Penn Central Police Station was there. Sergeant Kenwood, Patrolman Alonso, who was Mr. Sova's partner, he arrived on the scene at the same time, Lieutenant Rockefeller came down. The entire police force was there all over Penn Station, and, secondly, without the Penn Central, the train can't leave. Mr. Cadogan had to give his approval to the station master to take the train out. This isn't the rush hour. This is Sunday morning, ten o'clock. If they wanted to speak to some of the people who went on the train, they simply hold up the train.

How many people could there have been on a Sunday morning at ten o'clock? On the whole train, maybe fifty people. Most of them weren't on the train, they were waiting for Mr.Cadogan to take them another way to get down to the train, all of which he did after the police came, I suppose I enjoy trying a lawsuit, it is depositions, I enjoy people, but this is not a study or a law school exercise. This is a case of a woman who was, to use the defendant's terms, they do not contradict in any way her injuries. Totally uncontradicted. But that wordings too fast. That means that they have had her examined, they don't dispute that she has a twenty-five percent permanent loss of function and use in her foot

or leg, no dispute whatsoever that she is in pain and has been since this accident and she has -- I hope that is not her whole life, but she has at least according to the Life Expectancy Tables of the Department of Health, Education and Welfare, eight more years of increasing pain and suffering, because we know that when there is a fracture in especially weight-bearing bones, we develop as we all get older, arthritis, and she was seventy-five when this accidentoccurred -- seventy-seven.

The police report said she was born in 1900. That is uncontradicted, the pain, the discolaration. Her condition in 1975, in August, when she was seen and examined by Dr. Kaye, who examined her, he treated her, and he was her real doctor, he didn't just examine her for court purpose, she had twenty-five percent loss of use of function of the foot.

Today here in court, now a year and a half after this accident, she still has loss of full use. It is also uncontradicted that that condition is permanent. We often see the Clairol Balsam commercials, the before and the after. That anology is not perhaps so far off here, but unfortunately after the job is done, we don't have someone who is prettier and sexy, we have

someone here who has gone from an utterly independent woman, who has managed fantastically well since her husband passed away, who has been to Scandanavia by herself, goes to Europe, who has taken care of her own house, cooking, cleaning, washing, who has a tremendous amount of pride, wouldn't think of being a burden to anyone in her family, her sister, her daughters, and now thanks to the fantastic way in which the Penn Central maintains their escalators, her daughter, Mrs. Serafini, retired earlier than she would have from teaching, she takes care of her, she has to help, if not completely do the shopping, taking care of the house, bringing her to the deposition, bringing her to the doctor's office.

A completely independent woman with a fantastic amount of pride now must be a burden unwittingly to her entire family. Everything she needs done, she has to call upon them. Everyplace she wants to go. Where does she go now? She hasn't been to Europe since. She is not going to Scandanavia. The biggest trip she has taken was to Virginia one time to see her daughter since this accident, and then she had to go by plane because going by train is too much.

I stand here in front of you and I say we

can't undo the damage. I would like to very much. I'd like to fix the escalator and put her foot back together. There is only one thing that we in this courtroom have the power to do after the doctors have done all they can, and that is to attempt to make a person whole. I often sometimes think how we can prevent this from happening again. That is to award a sum of money. I use the term award, not reward, because you are not enriching somebody. You are attempting legally to give back and make whole what has been taken away from them due to the negligence someone in injuring a person.

That is the whole function and purpose of a jury's verdict, as well as an expression perhaps of their evaluation of someone's conduct in a case. I stand here in front of you as this case ends and ask you to do that, to say to the Penn Central, if you want to save money and not have a maintenance contract with Otis or other professional qualified people, that's okay, but if you want to maintain an escalator, you are a common carrier, you run a train service, you have a railway station, you have to keep this escalator in the same standard of care that Otis or one of the other escalator do. They are fifty percent of the market, I assume there is another fifty percent, but it is not who does it but how

well it is done. It is who is to bear the loss if it is not done right and as a result of that someone is injured.

I respectfully say to you that shouldn't be Mrs. Monroe. That should be the Penn Central Railroad. Thank you very much.

CHARGE OF THE COURT

Monroe v. Penn Central (Frankel, Marvin E.)
75 Civil 2913
1/27/76

THE COURT: Ladies and gentlemen, before we stop for the day and let you rest from this case pending your critical responsibilities for tomorrow when you are to undertake to judge it, it is my responsibility to give you the relatively few rules of law that you will have to have in mind when you undertake to reach a decision. This is, I suppose we in the law would say, a simple case. The rules that you will hear about are not very complicated.

I am sure I don't need to remind you that that doesn't mean it is an unimportant case. All the cases in our courts are important. The case is important to the plaintiff, to the defendants, it is important to you as citizens who come here to participate in the administration of justice. It is important, then, that all of us follow the law. As I say, I am supposed to convey the rules of the law to you as they will govern your deliberations and your decisions.

Remember that when you come together to decide, you will decide strictly on the evidence, the testimony, the exhibits, one or two things that are undisputed, so-

called facts of which a Court takes judicial notice, as you may have heard, that is undisputed things that everybody agrees are true and therefore they are simple enough even for judges to notice, such as the life expectancy of a person, which is one of the items in this case.

In addition and perhaps again unnecessarily, you will administer equal justice in this case without respect to persons, in the old expression. That means that everybody comes here and stands before the Court as an equal: individuals, corporations, trustees of railroads, whatever. All are entitled to the same cool, impartial consideration in your deliberations.

You know how the case started. It started from an accident that all agree happened and that all I think agree was unfortunate a year ago this past April. You know about the resulting injuries and sufferings of the plaintiff, Mrs. Monroe. We started out in our lawsuit with the understanding, nevertheless, that the fact that there has been an accident to somebody who then comes to court does not in itself mean that somebody who is sued is responsible or must pay damages.

Plaintiff comes to court in this case, as in others, and claims that the defendant is liable. To sustain that claim she must establish that on the facts as

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you find them, the defendant, and I will use the singular, we are talking about a railroad in effect, she must establish that the defendant violated or breached some legal duty that it owed to her. You know the claim in that respect. The claim is that there was a breach of a legal duty, that the defendant was negligent, negligent in the maintenance and operation of that escalator about which we have heard, and that that negligence was the proximate cause of her injury and her resulting damages, and that on that basis this defendant must be liable to her in your verdict.

You know that the defendant denies liability, doesn't deny that she was hurt or that this caused damage, but denies that the claim of negligence has been established. The plaintiff, as I say, has undertaken to prove that claim. In our system that means that she has, in the expression that's familiar to you, the burden of proof.

The first rule and relatively simple rule about that, in our scheme of evidence and proof, the party in a lawsuit, in a civil lawsuit, who has the burden of proof must satisfy you, the jury, of his or her position by a fair preponderance of the evidence. A fair preponderance means very simply the greater weight of what you find to be credible evidence in a case. It refers to the

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quality, the persuasiveness or non persuasiveness of the evidence, not the number of people, who said what or the amount of exhibits, or anything of that nature.

When a party has the burden of proof, that party must satisfy you that he or she has produced more convincing evidence for his or her position than the evidence on the other side. That means, in the figure of speech we commonly use about the weight of the evidence, that if you were to find on any of the several issues about which I will talk to you that the fact or the thing you should find is evenly balanced in your minds, that the probability is not more one way or the other, you would find against the party having the burden of proof.

On the other hand, when we say somebody has the burden of proof, we don't mean that that party must prove his or her version beyond doubt or even beyond a reasonable doubt, which is, as you know, the burden, the higher burden, in a criminal case. In a civil case, which is what this is, if the balance shifts in any degree to the side of the plaintiff, the party with the burden of proof, then you will find that the burden has been sustained by her with respect to any issue you happen to be considering.

What are the elements of this case that you will be thinking about starting tomorrow morning? Briefly,

there are two things the plaintiff must establish in order to make a case, in order to justify a verdict in her behalf. First, liability, that the defendant is liable on the theory of negligence that I have very briefly sketched to you and that I will elaborate a little bit now. Second, if you find liability, you reach the other branch of her case, proof of damages. I think it is fair to say that there is no dispute that some amount of damages have been proved in this case. If you reach that question, your problem simply will be to decide how much.

In order to prove liability, again, breaking those things down into little bits for simplification, you might say the plaintiff must have satisfied you on two subjects: First, that the accident happened in substantially the way her evidence describes, and, second, that it was the defendants' negligence which was a proximate cause, in the legal expression, of that accident. The theory is negligence and that's a word in common use I think. Its meaning in the law is not terribly different from its meaning in everyday speech, but let me tell you the definition generally of negligence as it applies in a case like this one, and then I will add a few particular thoughts that apply to the concept in a case of this nature.

As a matter of general definition, negligence

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is the failure to exercise the degree of care that a reasonable and prudent person would exercise under any given set of circumstances. Negligence may arise from doing an act that a reasonable and prudent person would not do in the circumstances, or, on the other hand, from failing to do some act or acts which a reasonable and prudent person would do in those circumstances.

When we speak of persons in this setting, we include, of course, corporations in the sense that a corporation, the Penn Central or now its trustees, are responsible for the negligence, if it is found to have existed, of the employees or officers who were responsible for the particular activity which is said to have been performed or with respect to which there is a claimed failure of performance, characterized by negligence.

We are talking about a common carrier and we are talking about this escalator for the area leading to the platform from which that Washington train was scheduled to leave a year ago April. A common carrier, which this railroad was and is, is not under the law expected to guarantee or absolutely insure the safety of its passengers, whether on the train or on its facilities leading to the train. It is, however, required to exercise reasonable care for their safety.

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Reasonable care, adapting the general definition that I gave you means that degree of care that a reasonably prudent carrier of passengers would exercise under the same circumstances in keeping with whatever dangers and risks there were that should have been known or were known to the carrier or which it could reasonably have been expected to anticipate.

Somebody who enters an area adjoining the place where he or she will board a vehicle or a train of a common carrier is a passenger from and after that time. If you find in this case, as seems to be uncontradicted, that the plaintiff had paid her fare for passage aboard the defendants' train, had passed through the gate and was on the descending escalator to board the train at the designated platform, you will find she was a passenger and that she was owed the duty of care that this railroad owed to all its passengers. That duty includes the duty to provide passengers with a reasonably safe means of entrance and exit to and from the train platforms at which its trains arrive and depart.

More specifically, a passenger riding an escalator to or from a train in such a situation has a right to assume that the escalator will be kept in reasonable condition to avoid accidents while people are

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riding aboard that facility. As you know, the plaintiff claims that there was negligence in the maintenance or operation of that escalator, and she has undertaken the burden of proving that.

She may do this by circumstantial evidence, that is by proving facts and circumstances from which negligence may reasonably be inferred by the triers of fact, and that is, of course, you, the jurors. If the instrumentality causing the injury, and I am referring still to this escalator, was in the exclusive control of the defendant, and if the circumstances as you found them surrounding the happening of this accident were of such a nature that in the ordinary course of events such an accident would not have occurred if the defendant controlling the instrumentality had used reasonable care, the law permits you, though it doesn't require you, the law permits you but does not require you to infer negligence from the happening of such an accident.

So in this case if you find, and, of course, what are the facts to be found is a critical subject for you, if you find from the greater weight of the evidence that the escalator was at the time of the injury in the exclusive control of the defendant, and if you find that the circumstances of the accident were such that in the

ordinary course of events it wouldn't have occurred had reasonable care been used by the defendant in operating and maintaining the escalator, then you may infer that the defendant was negligent, unless, taking into consideration all the evidence in the case, you conclude that the accident in fact was not due to any negligence on the defendants' part.

If you find that there was negligence under the definitions I have given you, you must also be satisfied that the negligence was, in that legal expression I mentioned, the proximate cause of the injury to this plaintiff before you may hold the defendant liable. The legal term doesn't present any special complications either. We say an act or omission is the proximate cause of an injury if it was a substantial factor in bringing about the injury, that is, if it had such an effect in producing the injury that reasonable people would regard it as a cause of that injury.

Those very simply are the rules as to negligence. If you find negligence and proximate cause, as I have been defining them, you then reach the question of damages, because you will have found that the defendant is liable. If you do not find liability, then, of course, your task is ended because you must return a verdict for

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the defendants.

Now when I reach the question of damages and how you compute them, bear in mind that this isn't to suggest to you, because it is not my province to suggest to you one way or another, that you will have found liability. I give you these instructions only to be followed if you find liability and then you are required to go forward and compute the damages to be awarded to this plaintiff.

You understand that the purpose of the law on this subject, such law as there is on damages, is to award as nearly as possible a sum that will be just and fair compensation for the loss flowing from the legal wrong done to the plaintiff. As I say, damages are to be compensatory and reasonable, neither excessive nor punative nor inadequate or begrudging in the circumstances of the case.

Much, as you will understand, is left to the sound common sense and judgement of a jury on a subject like this. It is not a question to be decided by technical measures or easy mathematical formulae. The best we can do for you and what we customarily do in cases of this kind is give you the fundamental principles to be applied together with your good sense, including your sense of

justice, in making an award, if you determine that an award is due in this case.

Basically, in short, you may consider two things in computing the damages to be awarded to the plaintiff in this case. First, pain and suffering in the past and if you so find extending into the future, and second, her expenses, medical, hospital, drugs, added costs of housekeeping and care and things of that nature, as you find them to have been incurred, both those incurred to date and those, if any, that you find will continue to accrue in the future.

As to the pain and suffering, you may consider the physical pain and any mental anguish suffered by this plaintiff at the time of the accident, in the time since then, and, in addition, as I said, in any future time that you find as a fact she will continue to experience pain, suffering and bodily impairment as a result of the fractures about which you have heard.

You know that this subject,pain, suffering, impairment of the body, is obviously not one that can be cranked into a computer. It is not easy to translate such suffering, pain, into money terms. Nevertheless, there is a very long, centuries long tradition, in our law under which jurors like yourselves and judges, when they sit

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without a jury, have been expected to make that kind of translation. It is, as I have said, a matter committed to your collective wisdom, your sense of the fitness of things, your judgement about the way people feel and behave, and in the end your notions, all collective and taken together, of what would be fair in all the circumstances.

You will apply such conceptions, if and when you reach this subject, in undertaking to make an award that will be fair and reasonable for the factor of pain, suffering and impairment on which a portion of the damages are claimed by the plaintiff. In addition, she would be entitled to an award for her expenses, medical expenses, hospital expenses, charges made by physicians or to be made by physicians, the cost of drugs, living expenses, any or all of which are found by you to flow proximately from this injury.

I have defined the notion of proximate cause, and you will apply that again here. As I have said, with respect to both kinds of damages, as I have classified them, the pain and suffering and the out-of-pocket expenses, the plaintiff is entitled to an award for those incurred to date and she is entitled to such additional damages as you find will extend into the future in respect of both these kinds of losses. That involves you in estimates and

calculations and some ideas about probabilities.

It is in that connection, as you heard in a very standard fashion, that the Court was asked to take judicial notice of life expectancy. You know what life expectancies are. They are statistics, and the life expectancy of this plaintiff in the lingo of this subject was said to be, as I recall, 8.8 years. That doesn't mean, and I don't suppose I really need to insult you by saying this, but it is part of the standard instructions, that doesn't mean that anybody can predict as of today how long any of us will live, although we all have, under these tables, a life expectancy. A man 57 years old as of today has a life expectancy of X years, any man, and a woman the age of the plaintiff has a life expectancy of 8.8 years. That means the average is 8.8 years. Mrs. Monroe is not a statistic, none of us is.

That figure is given to you as one of the factors that you may employ in your judgement, if and when you determine that you will award future damages for pain and suffering. You will consider this particular plaintiff as well as the statistics in deciding to what extent, what amount, you will award for pain, suffering and expenses that I have been telling you about.

This has been a very short trial. You have

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just heard brief and crisp summations. I am not going to resummarize the evidence for you. I am going to make one or two comments that are more or less standard about the evidence and how you will deal with it, and then we will approach the end of these instructions.

You have heard a little bit of expert testimony, and that's a kind of standard topic for jury charges. You heard a physician. You heard some people who say that in one way or another they have expertise with respect to the functioning or maintenance of escalators. Usually ina lawsuit in our courts, people are then permitted to give so-called opinion evidence. Usually they are allowed to give reports of mostly sensory experiences, what they saw, what they heard, felt, smelled, etc.

But there is, among other exceptions, an exception for so-called expert testimony. An expert is somebody who is schooled or experienced in some particular field, and he may give an opinion. He may give an opinion on what he is given to suppose are the facts. First of all, the validity, the weight, the utility of the opinion, will depend on how sound the facts are on which he bases it. So when you are considering whatever expert testimony you have heard, and it hasn't been very fiercely disputed, but

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I tell you the rules anyhow, bearing in mind that insofar as the opinion rests on supposed states of fact that are different from what you find the facts to have been, that would impair the opinion.

Secondly, in our system where the jury is in truth sovereign and supreme as to the facts, no matter how accurate the supposed facts, no matter how expert the expert, the judgement is in the end for you. So if there are any questions about the validity of any opinions you have heard or differences of expert opinion, remember you are not bound by any expert. You are the arbiters of the facts, and even as to expert opinions. it is your opinion that controls in the end and will determine this case.

Another and one of the last of the routine subjects of jury instructions is the subject of credibility. You rely as jurors, we all do in the courthouse, on the accounts of witnesses to a very large extent in figuring out what happened. What happened, is of course, fundamental in deciding where the justice of the case lies. Witnesses in almost every case give varying accounts of the facts, and those varying accounts, when they stem from failures of memory, inadequate observation at the time or worse motives, those varying accounts lead you to questions

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of credibility: How do you decide which witness to rely on to what extent.

So we instruct on credibility. Although we instruct on it, it actually isn't a subject of legal expertise. You don't learn anything in law school, anything special about judging credibility. We have as you have observed a jury system. We bring jurors to the courthouse to judge credibility because we think it is a matter for resolution by people of diverse and ordinary experience, using their good sense, their awareness of how the world works and their accumulated and collective ability to appraise people and make judgements about them.

So you will be doing that. You will consider the several witnesses you have heard and you will be sizing them up. To what extent did any of the witnesses seem to you to be frank and open and able to recollect clearly and able to observe accurately and to what extent did the witness seem determined, willing, to tell you accurately what he or she recalled.

You will compare the direct and cross examination. You will consider the interest or interests of the several witnesses, commonly people connected with a lawsuit who come to court, have some interest in a case and its outcome. The plaintiff, her daughter, have obvi s

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interests, and I wouldn't need to express those for you. Employees of the defendants have equal interests of their own in vindicating what they did or explaining what they didn't do.

You will consider that matter of interest, among many other things, when you are judging credibility. Obviously the fact that somebody is interested in the outcome doesn't mean that the person is to be disbelieved. If that were true, we simply wouldn't have interested witnesses and we would never be able to try most of our cases. We know that people, though they are interested, may and frequently do tell accurately what happened.

I mention interest to you, as I have said, simply as one of the many things that you and your good sense will take into account in appraising, in judging, testing, credibility. If you were to discover in this or any case that a witness came to the witness stand and took an oath to tell the truth and deliberately, willfully, lied about some material fact in the case, it would be permissible for you to disregard the testimony of that witness altogether, or you may credit, accept, take into account, whatever parts of the testimony of that witness or any other you find helpful and credible in deciding the case before you.

The sum of that matter is that you are, as I keep repeating, the sovreign judges of the facts and the sovreign judges of credibility, and you will make that judgement as your rational intellect and your conscience, all working together dictate. When you go to deliberate tomorrow, there will be six of you, but we are going to ask all eight of you to come back at 9:30 tomorrow morning.

Let me say about the number that obviously the purpose of having group decisions of this kind is the desire that you will reason together. Every member of the jury not only has a right but a duty to contribute his or her own wisdom to the joint effort to decide. By the same token, everybody has a duty to listen respectfully and attentively to the views of fellow jurors. If you have a point of view and as you go along you rationally change your mind, you must not hesitate to announce the change.

On the other hand, if you have a point of view and you hold it in good conscience, you are not expected to give it up simply because you happen to be outvoted in any particular time. In the end, as I think you know, but I remind you, the verdict of the jury must be a unanimous verdict. But it should, it must, represent the wisdom and the conscience and the decision of each of

thepersons who together comprise the jury. The verdict will take one of two forms, it will either be a verdict for the plaintiff in an amount of money or a verdict for the defendant. Our practice is to announce the verdict orally in open court. So, Miss Lavero, if and when that stage is reached, you will tell us the verdict.

Before you go, let me just find out whether Counsel have any exceptions, as we say, any other or different things they want me to tell you.

(At the side bar)

MR. COUSINS: Your Honor is submitting the question of control to the jury as a fact to be decided by them. But I believe it is both admitted in the pleadings and throughout the whole trial that the Penn Central had complete control over the escalator. I think it is something the jury should be told and not submitted to them as a fact, unless they start thinking what controls means.

THE COURT: I just read your requests and I am sorry. You mean res ipsa loquitur?

MR. COUSINS: You are submitting the question of control to them as a question.

THE COURT: That is exactly as you requested it.

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MR. COUSINS: Not withstanding, as the case turned out --

THE COURT: Denied.

MR. COUSINS: Your Honor used the language, they must find the accident happened in substantially the way the plaintiff claimed it did. That has been deleted in the most recent recommendation of the advisory committee on the pattern jury instructions, and I except to that for this reason. Let's assume, for example, the steps stopped, which could happen, and the railing went up. The same accident could have occurred but she thinks the steps kept going and the railing stopped. She shouldn't lose the case because of that.

THE COURT: That would be substantially what she said. She said her hand went back. You even said in your opening that it could go back because it stopped or the other.

MR. COUSINS: Just for the record, I know you won't change your mind, I request that you charge the older doctrine that the common carrier has the highest duty of care--

THE COURT: Let's not go through that. I denied that.

MR. COUSINS: Judge, that was a beautiful

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charge.

THE COURT: Mr. McMahon.

MR. McMAHON: Your Honor, I request that your Honor charge the jury in connection with the defendants' additional requests to charge A and B in substantial form as that.

THE COURT: I denied that before. It is denied again.

MR. McMAHON: I think I have to take an exception.

THE COURT: I don't think you do. If that is all you have left, let me let the jury go.

MR. McMAHON: I have one more. No, that is all I have in substance for the jury.

(In open court)

THE COURT: We are going to relieve you, ladies and gentlemen, at this point and ask you to come back at 9:30 tomorrow morning to begin your deliberations. Let me instruct you, because that's the law, that when you return here in the morning and you won't all get here at the same second, some come from New Paltz and some are luckier, you must not start deliberating until you have been instructed to start, until I say "go."

For one thing, as I say, there will only be six

deliberating. For another thing, it is the law that you shouldn't have rump sessions of parts of the jury. So talk about other things until we have formally opened court and formally asked you to retire to begin to deliberate.

In that same connection, let me instruct you, for what I think are obvious reasons, that you should not overnight talk about this case with people outside here. Again,talk about other things. You will have plenty of time to discuss it with your heart's consent tomorrow morning. With that let me wish you a pleasant evening and I will discuss it with you tomorrow morning. Good night.

(Jury not present)

MR. McMAHON: Your Honor, I apologize. Your Honor charged the usual res ipsa loquitur charge, and I think I take exception to that for the reason that the plaintiff waived any verdict on the principle of res ipsa loquitur by the offering of proof of negligence.

THE COURT: Mr. Cousins and I don't think that's the law, but that's the kind of question at which you have another go another time, if it ever proves necessary. I did consider it. I think you are wrong.

MR. McMAHON: Then the next thin I have with to future damages, there was no evidence of any future

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damages whatsoever. As a matter of fact, the only evidence--

THE COURT: Let's not take time with that. You heard the doctor sit here and you said it is uncontradicted, twenty-five percent loss of use, you heard her testimony about the housekeeping and other things. We will leave that to the jury.

MR.McMAHON: I just want an exception.

THE COURT: You did except. Don't take a long time on it.

MR. McMAHON: I appreciate your remarks. I have already done the additional requests I submitted, and I except to your failure to give those. On the defendants' requests to charge, the principal requests to charge, your Honor stated that you would give in substance number two. I think in principal you did, so I will withdraw any exceptions I had there.

With respect to number six, the proof of mere happening of an accident is not ground for holding the defendants liable, your Honor didn't give that charge.

THE COURT: I think I did.

MR. COUSINS: You did.

MR. McMAHON: Also on the question of the evidence being evenly balanced, number eleven --

THE COURT: You don't think I gave that

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either?

MR. McMAHON: No, sir.

THE COURT: Okay. I think I did.

MR. McMAHON: Then number 8 --

THE COURT: Look, one of us has lapses of memory, and I guess I have to rule according to me, but that's the third or fourth one that you have said I didn't give that I am morally certain I gave. Let the record show that moral certainty, so that if there is a serious question here of senescence, somebody can take appropriate action.

Go ahead.

MR. McMAHON: Your Honor mentioned something, I didn't quite get this, about a violation of legal duty. I didn't quite get that part of the charge. In any event, wherever that started, I except to it. I didn't quite understand it, for one.

THE COURT: What else?

MR. McMAHON: That is all.

THE COURT: Do you have anything else, Mr. Cousins?

MR. COUSINS: No.

THE COURT: We are all to be here at 9:30 tomorrow morning, gentlemen.

lhtg

(Court Exhibits 1 and 2 were marked)

(Court adjourned)

MONROE vs. BLANCHETTE

New York, N.Y.
July 28, 1976
9:48 a.m.

(Judge Frankel Presiding)

(In open court, jury present)

THE COURT: Good morning, ladies and gentlemen. I asked you to wait, and I trust you have, because before the actual deliberations start I have to excuse the two alternates because the other six have survived and all look fit. It is a jury of six in this civil case. Let me not make any usual oration at you but simply thank you for being with us and for paying attention.

You understand that you are here just in case. (Two alternate jurors were excused)

THE COURT: For the members of the jury who will deliberate, let me simply add to what I told you yesterday, a couple of thoughts for your guidance. First; I will ask Counsel to bundle up the exhibits that were received, and we will send them in to you for such use as they may serve. Second; if at any point you feel you need to hear any of the testimony again, send us a note through your forelady and we will undertake to have the reporter find what you need. We will get it for you. I don't urge or encourage that. It has been a short trial

and the main objective is for you to remember what has been said, what the issues are, and undertake together to find the facts and decide the case. But at the same time if you need any of the material, tell us about it and we will get it for you. The same holds true for the instructions I gave you yesterday afternoon, the charge, if any part of that becomes unclear to you or a subject of dispute and you want it repeated, tell us which part you need and probably I will ask the reporter to find that and read it to you in his more melliflous voice.

With that, I understand the marshal has been sworn.

THE CLERK: Yes, your Honor. I swore him in.

THE COURT: Let us ask you to retire and proceed to your deliberations.

(Jury commenced deliberations at 9:51 a.m.)

THE COURT: If you gentlemen will just agree on what the exhibits are and get them together --

MR. COUSINS: We did that last night. We have them all in order.

(In open court, 12:30 p.m.)

THE COURT: Court's Exhibit 3, asking for a copy of the Otis checklist, we handled that before.

Now the evidently want the charge relating to negligence. I will ask our court report to read that to them.

MR.McMAHON: Only thatportion relating to negligence, your Honor, is that correct?

THE COURT: Yes.

(Court's Exhibit 3 and 4 were marked)

(Jury present)

THE COURT: Ladies and gentlemen, I am going to ask Mr. Hennefield, our reporter, to read to you the portion of the charge relating to negligence which you requested.

(Record read)

THE COURT: Does that answer your requests, ladies and gentlemen? Anything else, gentlemen before the jury retires again?

MR. COUSINS: No, your Honor.

MR. McMAHON: No.

THE COURT: Will you retire again, ladies and gentlemen?

(Jury resumed deliberations at 12:40 p.m.)

MR. COUSINS: Your Honor, again, just for the record, I will continue my exception to submitting to the jury and using the words "if you find control." I think by the time the case is over but that the Penn Central

was in fact in control of the escalator.

THE COURT: Look, gentlemen, there is a limit. When he rereads something you have excepted to, I don't think you have to take your exception again for heaven's sake.

MR. COUSIN: I think not. I wasn't sure. No problem.

THE COURT: It is not necessary. Around eleven o'clock the jury will go out and you will all be excused, say, for an hour and a quarter.

(Recess)

(3:55 p.m.)

(In open court, jury not present)

THE COURT: We have a note from the jury. The note says "We find for the plaintiff Mrs. Monroe and award the sum of $25,000 for the plaintiff, Mrs. Monroe." It is signed by the forelady. If you will have the jury brought in, we will have that confirmed in open court. It appears that I failed in my effort to save your client some money, Mr. McMahon. That is not my job anyhow. Besides, you have an appeal and all kinds of things.

(Jury present)

THE COURT: Ladies and gentlemen, we have your note which indicates that you have reached a verdict.

I just want to confirm that the notes means what you mean. I am sure it does. It says you find for the plaintiff, Mrs. Monroe, and that your verdict is in the amount of $25,000.

Is that your verdict, ladies and gentlemen.

(Chorus of Aye's)

THE COURT: Mr. McMahon, do you want the jury polled?

MR. McMAHON: Yes, your Honor.

THE COURT: Will you do that?

(Jury was polled)

THE COURT: Ladies and gentlemen, it was, as I told you, a relatively modest case, but not an unimportant case. I hope you have had some satisfaction from your assignment in the judging of it. We all thank you for your efforts, your patience in being with us. I don't comment on verdicts, I am not saying that that is the verdict I would have reached or that it is not, because I have never faced that question, taking very seriously the view that it is for you to decide that.

I am only talking about the manner of your work with us and the substance of your devotion to this case, for which we are all in your debt. We thank you for

that. I am told by our clerk that your term of service is completed and that as you make your way out of her, she will be able to give you your certificates of service. Our thanks again and good wishes and good afternoon to you.

(Jury excused)

(Court Exhibit 5 was marked.)

THE COURT: Do you have any motions now, Mr. McMahon?

MR. McMAHON: Does the plaintiff?

MR. COUSINS: No motions.

MR. McMAHON: Your Honor, the defendant trustees of the Penn Central Transportation Company move to set aside the verdict and renews its motion for dismissal of the complaint and directed verdict in their favor on the grounds specified after the entire case and upon the further ground that the verdict was against the weight of the credible evidence. I have afurther motion for a new trial on the ground that your Honor failed to charge the jury on contributory negligence.

I thought that was, as it turned out, extremely important, and I think there was evidence of it. At least the jury could have found it. I move on that ground particularly.

On the other aspect of it, the credible evidence, the jury was permitted to speculate on the area of maintenance. We do have a maintenance staff and they are in the same category as the Otis people, so to speak. They are qualified machinists, they are journeymen, they belong to I.A.M., with what all of that entailed, as was brought out on the plaintiff's case.

Mrs. Monroe created or caused a great deal of sympathy. She is a pleasant looking woman and is not, of course, young. But I think this, there wasn't really one shred of proof that this company of these trustees acted in any manner other than reasonable people in the operation and the maintenance of the escalator.

On those grounds alone I think it is sufficient to set aside the verdict and direct a verdict--and/or dismiss the complaint

THE COURT: Iwouldn't know what kind of action to take with respect to the plaintiff's being a pleasant woman, although I agree with you, and I don't feel I can disturb the judgement in any other respect either, so your motions are all denied, Mr. McMahon.

MR. McMAHON: I have not made any motion with respect to the amount. I do not include in that any

motion with respect to the amount of the verdict.

THE COURT: Judgement will be entered on the verdict. Thank you, gentlemen.

(Court adjourned)

(Jury excused)

COURT'S EXHIBIT 1--DEFENDANTS' ADDITIONAL REQUEST TO CHARGE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH C. MONROE, Plaintiff, -against-	75 CIV 2913 (MEF)
ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. McARTHUR, Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, Defendants.	DEFENDANTS' ADDITIONAL REQUEST TO CHARGE

Defendants, ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. McARTHUR, Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, respectfully request that the following instruction be included in the Court's charge to the jury in this case:

(a) If this escalator (B-7) operated properly before the accident, the jury might presume that the functioning would have continued at the time of plaintiff's accident, and if the escalator was found to be functioning normally and properly when it was later inspected by machinist, the jury might infer or conclude it would have operated normally and properly at the time of the accident and therefore was not defective.

(b) The evidence in this case establishes that the escalator was inspected in a routine manner on April 12, 1975 and was found to be operating properly. It was

COURT'S EXHIBIT 1

likewise inspected on April 14, 1975 and found to be operating properly.

Respectfully submitted,
CONBOY, HEWITT, O'BRIEN & BOARDMAN
Attorneys for Defendants
20 Exchange Place
New York, N.Y. 10005
(212) 344-3131

THOMAS V. McMAHON
Of Counsel

COURT'S EXHIBIT 2--DEFENDANTS' REQUEST TO CHARGE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH C. MONROE, Plaintiff, -against- ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. McARTHUR, Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, Defendants.	75CIV2913MEF DEFENDANTS' REQUEST TO CHARGE

Defendants ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. McARTHUR, Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, respectfully request that the following instructions be included in the Court's charge to the jury in this case:

1. This is a legal proceeding and you must not permit either sympathy for plaintiff or prejudice against defendants, Trustees of the Property of Penn Central Transportation Company to affect your verdict in any way. The parties stand equal before the Court and are entitled to even-handed justice. The fact that Plaintiff is an individual while defendants are Trustees of a bankrupt Railroad should in no wise influence your judgment.

COURT'S EXHIBIT 2

2. There is no proof that the escalator involved in the accident was not constructed in the ordinary way. The Railroad was not bound to construct this escalator as to make accidents to passengers using the same impossible, or to use the highest degree of diligence to make it safe, convenient and useful. It was bound simply to exercise ordinary care, in view of the dangers attending its use, to make it reasonably adequate for the purpose to which it was devoted.

3. It is a matter of common knowledge that escalators are moving stairways and that this escalator (B-7) was in heavy usage before and after the accident. No mechanical defect has been demonstrated and no notice of any defect, failure or variation in its operation has been shown other than the testimony of the plaintiff. It is not sufficient to find in her favor.

4. If you find that defendants were negligent and that defendants' negligence was a cause of injury to plaintiff, you must still decide whether or not plaintiff was herself free from blame. The absence of negligence on the part of plaintiff contributing to the injury must be affirmatively shown by plaintiff either by direct proof or by circumstances. In considering the question whether plaintiff can be charged with contributory negligence, you must decide whether she exercised that care for her own safety which a person in her circumstances should reasonably be expected to have exercised. The burden of proving by a fair preponderance of the evidence that

COURT'S EXHIBIT 2

plaintiff was free of any negligence which contributed to the accident is upon plaintiff.

5. The burden of proving by a fair preponderance of the evidence that defendants were negligent and that such negligence was the proximate cause of the accident is upon plaintiff.

6. Proof of the mere happening of an accident is not grounds for holding defendants liable.

7. If you conclude upon your review of all the evidence produced by all parties that plaintiff has failed to prove that defendants were guilty of negligence which contributed to cause the accident and that plaintiff was free of any such negligence, then your verdict must be for defendants.

8. If you believe that any witness who has testified in this case has testified falsely with respect to any material testimony, you may disregard the entire testimony of that person or give such portion as you find credible such weight as you deem proper under the circumstances.

9. You are the sole judges of the credibility of the witnesses and of the weight to be given to their testimony. In determining this, you are entitled to take into consideration their bias, if any, their relationship to the parties, their interest in the outcome of the case, if any interest exists, their manner of testifying, their

COURT'S EXHIBIT 2

candor and frankness and any other test which you would ordinarily use in determining the weight to be given to the statements of persons with whom you come into contact.

10. Any expert witness, including a doctor, may give his opinion, and its value depends upon his qualifications and experience and the facts on which the opinion is based. In applying opinion evidence, you must disregard the opinion unless the facts assumed by the witness as the basis of his opinion have been established by a fair preponderance of the believable evidence.

11. If after thorough consideration of the evidence you are of the opinion that the credible evidence is evenly balanced on the issue of defendants' negligence, your verdict must be for defendants.

12. Under all the evidence your verdict should be in favor of defendants.

Respectfully submitted,

CONBOY, HEWITT, O'BRIEN & BOARDMAN
Attorneys for Defendants

THOMAS V. McMAHON
Of Counsel

COURT'S EXHIBIT 2, CONTINUED--PLAINTIFF'S REQUESTS TO CHARGE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

ELIZABETH C. MONROE,

Plaintiff,

75 CIV 2913 M.E.F.

-against-

ROBERT W. BLANCHETTE, RICHARD C. BOND, and JOHN H. McARTHUR, Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor,

Defendants.

PLAINTIFF'S REQUESTS TO CHARGE

----------X

Plaintiff respectfully requests this Court to charge the jury, prior to its deliberations, in the following manner pursuant to Rule 51 of the Federal Rules of Civil Procedure:

1. The fact that the witnesses , , and , are still employed by the defendant, PENN CENTRAL, and the testimony you have heard of their relations with their employer may be considered by you in determining whether their testimony is in any way influenced by their employment relationship with the defendant, PENN CENTRAL. PJI 1:92

2. Negligence is lack of ordinary care. It is a failure to exercise that degree of care which a reasonably prudent person would have exercised under the same circumstances. It may arise from doing an act which a reasonably prudent person would not have done under the same circumstances, or, on the other hand, from failing to do an act which a reasonably prudent person would have done under the same circumstances. PJI 2:10.

COURT'S EXHIBIT 2, CONTINUED

3. Plaintiff must prove by the greater weight of the evidence that the defendant, PENN CENTRAL TRANSPORTATION COMPANY, was negligent. She may do this by circumstantial evidence, that is, by proving facts and circumstances from which negligence may be reasonably inferred. If the instrumentality causing the injury (in this case, the escalator) was in the exclusive control of the defendant, and if the circumstances surrounding the happening of the accident were of such a nature that in the ordinary course of events it would not have occurred if the defendant having control of the instrumentality had used reasonable care under the circumstances, the law permits, but does not require, the jury to infer negligence from the happening of the accident.

Thus, in this case, if you find by the greater weight of the evidence that the instrumentality causing the injury was, at the time of the injury, in the exclusive control of the defendant, and that the circumstances of the accident were such that in the ordinary course of events it would not have occurred if reasonable care had been exercised by the defendant, then you may infer that the defendant was negligent, unless, taking into consideration all of the evidence of the case you conclude that the accident was not due to any negligence on the defendants part. PJI 2:65.

4. An act or omission is a proximate cause of an injury if it was a substantial factor in bringing about the injury, that is, if it had such an effect in producing the injury that reasonable men would regard it as a cause of the injury. PJI 2:70.

COURT'S EXHIBIT 2, CONTINUED

5. A person who with intent to board a carrier's vehicle has entered an area maintained by the carrier for use of its customers while awaiting passage, is a passenger. If you find that in this case the plaintiff had paid the fare for her passage on the defendants train and had passed through the gate and was on the descending escalator to go to board the train at the designated platform, you will find that she was a passenger. PJI 2:160.

6. A common carrier does not guarantee its passengers against accident or injury. It is required to exercise reasonable care for their safety. Reasonable care means that care which a reasonably prudent carrier of passengers would exercise under the same circumstances, in keeping with the dangers and risks known to the carrier or which it should reasonably have anticipated. PJI 2:161.

7. A common carrier is under a duty with respect to its equipment to exercise the highest degree of care that human prudence and foresight can suggest for the safe transportation of its passengers. Comment to PJI 2:164. Levine v. Long Island Railroad Co., 289 N.Y. 591, 43 N.E. 2d 722; Duhme v. Hamburg-American Packet Co., 184 N.Y. 404, 77 N.E. 386; Stierle v. Union Railway Co., 156 N.Y. 70, 50 N.E. 419, on Rearg. 156 N.Y. 684, 50 N.E. 834; 14 Am. Jur. 2d 450-460, Carriers, Secs. 1028-1040; 7 N.Y. Jur. 331-339, Carriers, Secs. 370-377.

8. [New York Courts seem to distinguish between railroad operations and railroad equipment. In the former case it

COURT'S EXHIBIT 2, CONTINUED

requires only reasonable care under the circumstances, but in the latter case it requires the highest degree of care that human prudence and foresight can suggest. If, however, the Court will not charge the foregoing paragraph, it is respectfully requested that the following charge be given.]

From its experience in the business, a common carrier knows or is charged with knowing the dangers to its passengers of faulty maintenance of its equipment, and it knows or is charged with knowing the means of avoiding such dangers. A common carrier of passengers has the duty to exercise ordinary care in the maintenance of equipment for the safety of its passengers, that is, it must exercise that care which a reasonably prudent common carrier of passengers would exercise under the same circumstances in keeping with the dangers known to it, or which in the exercise of reasonable care should be known to it. PJI 2:164.

NO 9. A carrier owes the duty to its passengers to carry them in a reasonably careful and prudent manner. A carrier has the duty to avoid causing jerks, lurches, or stops on an escalator which it has invited a passenger to use in order to board one of its trains. Based on PJI 2:165.

10. A carrier owes a duty to its passengers and prospective passengers to provide a reasonably safe means of egress to its train platforms in order to enter its trains. PJI 2:166.

11. A passenger descending the defendants escalator has a right to assume that that escalator will be kept in proper condition. Based upon Sparks v. City of New York, 31 A.D. 2d 660,

COURT'S EXHIBIT 2, CONTINUED

296 N.Y.S. 2d 378. Comment to PJI 2:225.

12. The defendant, PENN CENTRAL TRANSPORATION COMPANY, is liable for the negligence of its employees in the operation and maintenance of its escalators. Based on PJI 2:235.

13. My charge to you on the law of damages must not be taken as an intonation that you should find for the plaintiff. It is for you to decide on the evidence presented and the rules of law I have given you whether plaintiff is entitled to recover from the defendant, PENN CENTRAL TRANSPORTATION COMPANY. If you decide she is not so entitled, you need go no further. Only if you decide that plaintiff is so entitled will you consider the measure of damages.

If you find that plaintiff is entitled to recover from the defendant, PENN CENTRAL, you must render a verdict in a sum of money which will justly and fairly compensate the plaintiff for all loss resulting from the injuries she sustained. PJI 2:277.

14. If you decide for the plaintiff on the question of liability, you may include in your verdict an award for the injury you find that she suffered and for conscious pain and suffering which you find to have been caused by the negligence of the defendant. The plaintiff is entitled to recover a sum of money which will justly and fairly compensate her for her injury and for her conscious pain and suffering. PJI 2:280.

15. If you find that plaintiff is entitled to recover from the defendant, you may also include damages in your verdict

COURT'S EXHIBIT 2, CONTINUED

for any mental suffering, including emotional and neurological disturbances or any physical ailment resulting therefrom caused by the wrongful act of the defendant. PJI 2:284.

16. If you find that plaintiff is entitled to recover in this action, she is entitled to recover the amount of her reasonable expenditures for medicine and medical services, including physician charges, nursing charges, hospital expenses, and x-ray charges. If you find for the plaintiff, you will award her that amount which you find from the evidence to be the fair and reasonable value of the expenses necessarily incurred as the result of her injuries. If you find that the injuries plaintiff sustained are permanent and that she will be required to undertake medical, hospital and nursing expenses in the future, you may include in your verdict a sum for those anticipated medical, hospital and nursing expenses which are reasonably certain to be incurred in the future. PJI 2:285.

17. If you find that any of plaintiff's injuries are permanent, you must make such allowance in your verdict as you think that circumstance warrants, taking into consideration the period of time that has elapsed from the date of the injury to the present time and the period of time plaintiff can be expected to live. In this connection it is pointed out to you that plaintiff is now almost 78 years of age and according to the mortality tables has a life expectancy of approximately 9 years. Such tables are, of course, nothing more than statistical averages. They neither insure the span of life that I have given you, nor

COURT'S EXHIBIT 2, CONTINUED

assure that the span of plaintiff's life will not be greater. The life expectancy figure I have given you is not binding upon you, but may be considered by you together with your own experience and the evidence you have heard concerning the condition of plaintiff's health, her habits, employment and activities in determining what the plaintiff's present life expectancy is. PJI 2:281.

Respectfully submitted,

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Attorneys for Plaintiff
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New York, New York 10007
(212) 962-2800

NORMAN LEONARD COUSINS
Of Counsel

PLAINTIFF'S EXHIBIT 1.

ENN CENTRAL POLICE DEPARTMENT

ACCIDENT REPORT

DATE OF REPORT 4/13/75

NAME Mrs Elizabeth Monroe AGE 75 SEX F RACE white DOB. 5/17/00

ADDRESS 219-12 43rd Ave CITY Bayside LI STATE NY

EMPLOYED BY N/A CITY N/A STATE N/A

NON RESIDENT STAYING AT: N/A LENGTH OF STAY N/A phone 212 428-1797

DESCRIPTION OF ACCIDENT: TIME 9:50AM

STATION Penn Station NY TRACK 13 TRAIN 161 CAR# DATE 4/13/75

LOCATION OTHER THAN ABOVE: escalator from upper level to train level escalator # B7

INJURIES SUFFERED: appears to be a broken right ankle and cut on right ankle

DETAILS OF ACCIDENT: Mrs Monroe stated she was going down the escalator when her foot got caught in the steps causing her to fall. The right ankle appears to be the only injury as when asked she stated only her ankle hurts. She was removed by ambulance number 160 from polyclinic attendant Daniels to French Hosp at 10:05AM. Mrs Monroe was on her way to Washington D.C. on train 161. Area Examined by this officer and found to be clear and well lighted, escalator appears to be in proper working order. Mrs Monroe requested her Daughter Miss Mary Elizabeth Monroe be Notified of accident, this was done at 10:10am this date. Sgt Kenwood # 207 & Lt Rockfeller # 60 on scene

WITNESSES: (NAMES & ADRESSES)

1. none

2.

Mr Drosman Checked area and found it to be clear of debris.

ALLIED MAINTENANCE NFTD. (NAME)

AREA EXAMINED BY (MAINTENANCE DEPT)

OFFICER Richard E Sova 821 patrolman

CC: STATION MASTER J Kelly TITLE Patrolman SHIELD 821

CLAIM DEPT:

PLAINTIFF'S EXHIBIT 1

After checking tram on 9+10 saw an usher supporting Mrs Monroe against wall on track 13 entrance way. PA2 Alonso summoned Ambulance + chair & enable her to sit down. while awaiting Amb.

Doorman at 10th Av.

No Maintance Avail.

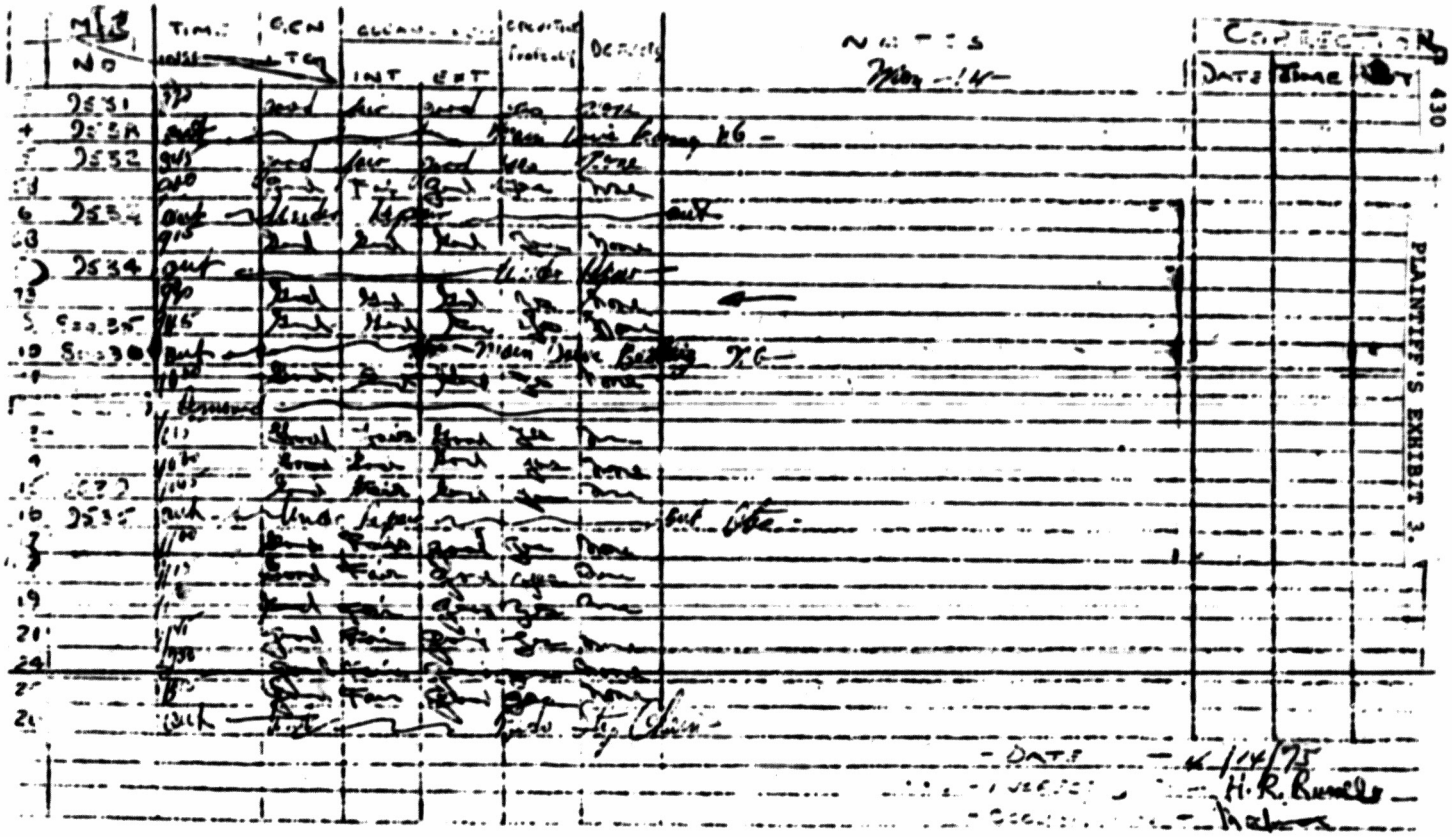
MTR NO	TIME IN	TIME OUT	SIGN	CLEANLINESS INT	CLEANLINESS EXT	OPERATING PROPERLY	DEFECTS	NOTES	CORRECT DATE	CORRECT TIME	CORRECT BY
2531	8	33	A	N	N	yes	none				
2538								c/s			
2532	8	41	N	N	N	yes	none				
53	9		N	N	N	yes	none				
2533								c/s			
68	9	11	N	N	N	yes	none				
2534	9	31	N	N	N	yes	none				
73	9	50	N	N	N	yes	none	←			
2535	10		N	N	N	yes	none				
8003								c/s			
	10		N	N	N	yes	none				
	10		N	N	N	yes	none				
	10		N	N	N	yes	none				
2539	11		N	N	N	yes	none				
2535								c/s			
	11		N	N	N	yes	none				
	11		N	N	N	yes	none				
	12		N	N	N	yes	none				
	12		N	N	N	yes	none				
	12		N	N	N	yes	none				
								c/s			

- DATE — 4/12/75
- INSPECTOR — [illegible]
- CORRECTED — Mr. [illegible]

PLAINTIFF'S EXHIBIT 2-I

429

BEST COPY AVAILABLE


NOTES
DATE
H. R. Runcie
PLAINTIFF'S EXHIBIT 3.
430

PLAINTIFF'S EXHIBIT 5.

THIS CHECK CHART MUST ALWAYS REMAIN IN THE MACHINE ROOM.....PLEASE DO NOT MUTILATE

This equipment is under .....

OTIS MAINTENANCE

Otis

- **serviced and repaired by .....**
  OTIS TRAINED MECHANICS
- **using only .....**
  GENUINE OTIS REPLACEMENT PARTS AND OTIS LUBRICANTS
- **keep up-to-date.....ask about**
  OTIS MODERNIZATION

THIS IS OTIS SERVICE CONTRACT:

No. _____ MACH. No's. _____

THIS CONTRACT (DOES ☐ DOES NOT ☐) INCLUDE CALLBACKS ON OVERTIME.

Otis Elevator Company

nearest office:

TELEPHONES

DAYTIME (BUSINESS HOURS)	HOLIDAYS, NIGHTS, SUNDAYS

OMC-4

Copyright 1953 Otis Elevator Company, New York

PLAINTIFF'S EXHIBIT 5

CHECK CHART FOR ESCALATORS

Operations To Be Performed During First Quarter . . . .

	JANUARY	
STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
	(L-ML) Lubricate canvas tread step wheels (aver. service).	(SA)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
MACHS.	(ALL) Seal small leaks.	(SA)
	(R) Lubricate intermediate gear bearing, motor bearing and worm shaft bearing.	(A)
	(O) Lubricate governor and sheave shaft bearings (if roller).	(A)
STEP RISEF	(ML-O-R) Check step risers and curtain boards.	(Q)
	FEBRUARY	
STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
	(ALL) Check main line switch fuses for heating.	(Q)
MOTORS	(ALL) Clean motor commutators,renew or reseat brushes if nec.	(Q)
	(ALL) Clean armature, motor with blower or vacuum.	(A)
	(ALL) Check armature and rotor clearances. (L-ML-O)	(A)
	(ALL) Check motor connections.	(A)
	(L-ML-O) Change oil in bearings.	(A)
STOP & START SW	(ALL) Check contacts, springs, wiring, clean and lubricate as required.	(A)
	MARCH	
STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
LANDINGS	(O-R) Check clearance handrail to No. 8 moulding.	(Q)
CONTRS.	(ALL) Clean with blower, check alignment of switches, lubricate hinge pins as required.	(SA)
	(ALL) Check all esistance tubes,grids and ner contr.equip.	(SA)
	(ALL) Check oil in overload relays, settings and oper. of overloads.	(SA)
	(ALL) Clean and check fuses and holders, check other controller connections.	(A)

Form 2923 A (5-70)

PLAINTIFF'S EXHIBIT 5
CHECK CHART FOR ESCALATORS

Operations To Be Performed During Second Quarter . . . .

APRIL

STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
STEP RISERS	(ML-O-R) Check step risers and curtain boards.	(Q)

MAY

STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
	(ALL) check main line switch fuses for heating.	(Q)
MOTORS	(ALL) Clean motor commutators, renew or reseat brushes if necessary.	(Q)

JUNE

STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
LANDINGS	(O-R) Check clearance handrail to No. 8 moulding.	(Q)
TRUSS	Cleaning of the truss is dependent upon usage and building conditions and is subject to the discretion of the District Supervisor. When steps and comb plates are removed for cleaning, a thorough inspection should be made and equipment lubricated and adjusted as required. On R's fill out Condition Report. (ALL) Clean truss, incline pan, underside of steps. (ALL) Check condition of track (wear, joints, wheel clearances, laterally and vertically). (ALL) Check step chain for wear and lubrication of side bars and pin connector holes. (ML-O-R) Check setting of step and skirt safety device (L-ML) Inspect step welds (ML-O) Lubricate chain and step wheels (0-3 yr.) (ML-can take place of SA Lubrication).	
LOWER LANDING	Remove floor or landing plates. (ALL) Check operation of tension carriage, condition of track and clearances, lubricate rollers and pivots as required (L) Check setting of chain tension device and switch. (ML-O-R) Check setting of broken chain switch.	
UPPER LANDING	Remove floor or landing plates. (ALL) Check condition and lubrication of main bearings (L-ML) Check tightness of main sprockets on shaft (O-R) Check setting and wear of tangentials (O) and step chain guides (R), lubricate as required. (ALL) Check handrail chain tightener and countershaft bearings, sprockets, lubricate as required.	

PLAINTIFF'S EXHIBIT 5
CHECK CHART FOR ESCALATORS

Operations To Be Preformed During Third Quarter . . . .

JULY

STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd. (M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping. (M)
	(L-ML) Lubricate canvas tread step wheels (aver. service). (SA)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation. (M)
MACHS.	(ALL) Seal small leaks. (SA)
STEP RISERS	(ML-O-R) Check step risers and curtain boards. (Q)

AUGUST

STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd. (M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.
MISC.	(ALL) Run escalator in reverse direction for short period to check operation. (M)
	(ALL) Check main line switch fuses for heating. (Q)
MOTORS	(ALL) Clean motor commutators, renew or reseat brushes if necessary. (Q)

SEPTEMBER

STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd. (M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.
LANDINGS	(O-R) Check clearance handrail to No. 8 moulding. (Q)
CONTRS.	(ALL) Clean with blower, check alignment of switches, lubricate hinge pins as required. (SA)
	(ALL) Check all resistance tubes,grids and other contr.equip.(SA)
	(ALL) Check oil in overload relays, settings and oper. of overloads. (SA)
BALUS-TRADE	Remove panels as required - depends on construction and space conditions. (ALL) Check upper landing handrail sheave bearings, sprockets and lubrication (R-3 yr.). (A) (L-ML-O) Check handrail tension device, clean and lubricate as required (A) (R) Clean surface of handrail tension rollers (3 yr.) (ML-O) Check and lubricate handrail guide wheels (ALL) Check lower landing handrail sheave bearings, lubricate (R-3 yr.) as required. (A)

Form 2923A-2 (5-70)

PLAINTIFF'S EXHIBIT 5
CHECK CHART FOR ESCALATORS

Operations To Be Performed During Fourth Quarter . . . .

OCTOBER		
STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
STEP RISERS	(ML-O-R) Check step risers and curtain boards.	(Q)
NOVEMBER		
STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
	(ALL) Check main line switch fuses for heating.	(Q)
MOTORS	(ALL) Clean motor commutators, renew or reseat brushes if necessary.	(Q)
DECEMBER		
STEP CHAINS	(R) Remove floor plate at lower end for access to step chains, use spray gun to lub. as reqd. (L) Apply lubricant with paint brush as required. (ML-O) Engage brush arm with step chain to lub. as reqd.	(M)
STEP WHEELS	(L) Apply oil lubrication with brush. Use sparingly to avoid dripping.	(M)
MISC.	(ALL) Run escalator in reverse direction for short period to check operation.	(M)
LANDINGS	(O-R) Check clearance handrail to No. 8 moulding	(Q)

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PLAINTIFF'S EXHIBIT 5
CHECK LIST FOR RECORDING SEMI-ANNUAL AND GREATER INTERVAL ITEMS

Please Note Additional Instructions on Reverse Side

This complete check chart folder is arranged for your convenience. Keep it neat and always make certain that you have properly recorded the semi-annual and greater interval items in the check list at the right of the folder.

The numbers following the item indicate the months in which work is scheduled. [ex. (1-7) (Jan.-Jul.)] Cross out those items not a part of the particular installation and those excluded from the contract.

NOTE: The colored sheets (left portion of this check chart) are arranged as follows:

(a) Each color represents a quarter of a year (3 months)

(b) Symbol:

(M) indicates MONTHLY
(Q) " QUARTERLY
(SA) " SEMI-ANNUALLY
(A) " ANNUALLY

The following equipment is excluded from the contract . . . . . .
. . . . . .

BUILDING . . . . . DATE . . . . .

ADDRESS . . . . . .

MACHINE No's. . . . . .

For OMC-4 Checklist, Order Form 2923C (2-74)

PLAINTIFF'S EXHIBIT 5

THIS CHECK LIST MAY BE USED FOR 1 TO 7 ESCALATORS LOCATED IN SAME BUILDING

NOTE. INSERT BUILDING IDENTIFICATION ESC NUMERAL, LETTER OR LOCATION OF ESCALATORS COVERED

INDICATE WITH ✓ MARK PERIOD IN WHICH EACH ITEM LISTED BELOW IS TAKEN CARE OF

When check list form is filled out turn it in to the office for a replacement

			ESC ___	ESC ___	ESC ___	ESC ___	ESC ___	ESC ___	ESC ___
			QUARTER	QUARTER	QUARTER	QUARTER	QUARTER	QUARTER	QUARTER
			1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
MACHS.	Seal small leaks	(1 7)							
	(R) Lubricate intermediate gear bearing, motor and worm shaft bearing.	(1)							
	(O) Lub. gov. and sheave shaft bearings (if roller).	(1)							
MOTORS	Clean armatures, motors,with blower or vacuum	(2)							
	Check armature and rotor clearances (L ML C)	(2)							
	Check motor connections	(2)							
	(L ML O) Change oil in bearings	(2)							
CONTR	Clean w/blower,check align of ws ,lub hinge pins	(3 9)							
	Check all resistance tubes and grids	(3 9)							
	Check oil in overload relays, settings and oper	(3 9)							
	Clean & check fuses & holders, check contr. conns	(5)							
STEP WHEELS	(L ML) Lubricate canvas tread stepwheels (under service)	(1 7)							
STOP & START SW	Check contacts, springs, wiring, clean and lubricate as required	(2)							
BALUS TRADE	Check upper handrail sheave bearings, sprockets, lubricate (R 2 yr.)	(9)							
	Check lower handrail sheave bearings, lub. (R 3 yr.)	(9)							
	(L ML O) Check handrail tension device, clean & lubr.	(9)							
	(R) Clean surface of handrail tension rollers	(9)							
	(M L O) Check and lubr. handrail guide wheels	(3 yr.)							
TRUSS	Clean truss, inside pan, underside of steps	(*)							
	Check condition of track	(*)							
	Check step chain for wear and lubrication	(*)							
	(M L O R) Check setting of step & skirt safety dev.	(*)							
	(L M L) Inspect step wedges	(*)							
	(O) Lubricate chain and step wheels	(3 yr.)							
LOWER LANDING	Check operation of tension carriage, condition of [illegible]	(*)							
	(L) Check setting of chain tension device & switch	(*)							
	(M L O) Check setting of broken chain switch	(*)							
UPPER LANDING	Check condition and lubrication of main bearings	(*)							
	Check tightness of main sprockets on shaft	(*)							
	Check setting and wear of tangentials (L) & Chain guides (R) lubricate as required	(*)							
	Check handrail chain tightener and countershaft bearings, sprockets, lubricate as required	(*)							

(*) As conditions dictate

PLAINTIFF'S EXHIBIT 5

IT IS ALSO IMPORTANT, ON EVERY VISIT, THAT THE ITEMS IN GUIDE BELOW RECEIVE SYSTEMATIC ATTENTION.

MACHINES - CONTROLLERS	General inspection of mach., sprockets, worm, gears, motor, brake, bearings, chains as used, lubricate as required.
	Empty gear case drip pan. NOTE: Oil should not be reused. Be alert to excessive leakage indicating need of new gland packing (L-ML-O).
	Check machine brake linings, adjust brake when necessary.
	Inspect main drive broken chain device (O), non-reversing switch (R), emergency brake switch (L), handrail tension device switch (ML-O) and governor switch (ALL).
	Clean brush rigging, commutators and undercutting as required.
	Clean & lubricate contr. contacts, connectors & holders, as reqd.
	Observe temperature rise of machine bearings, brake coils, controller coils and contacts.
INCLINE	Check step treads for breakage, loose screws & proper illumination.
	Check step risers, balustrading, skirt and curtain guards for clearances, projections, shear & tripping hazards, also balustrade lighting.
	Check stopping operation of main drive brake and operation of pawl magnets (L-ML-O).
HAND-RAILS	Check general condition of handrails and splices.
	Check handrails for adequate tension.
ESCALATOR LANDINGS	Observe handrail brush condition and protective action, clean if necessary.
	Check comb plate lighting, replace bulbs as necessary.
	Check comb plates and floor plates for wear that would create a tripping or slipping hazard.
	Check for broken or bent comb teeth, also clearances between comb teeth and step treads.

ON EVERY VISIT . . . . It is essential that the following be properly executed (items 1-8)

1. SEE CUSTOMER OR HIS REPRESENTATIVE.
2. RIDE ESCALATOR, OBSERVE STARTING AND STOPPING. CHECK FOR UNUSUAL NOISES.
3. PLACE GUARD AROUND MANHOLE OR AT ESCALATOR ENTRANCES BEFORE ENTERING MACHINE ROOM.
4. INSPECT ALL EQUIPMENT IN MACHINE ROOM PAYING PARTICULAR ATTENTION TO CONTACTS, CONNECTORS, REVERSE PHASE RELAY, OPERATING VOLTAGE.
5. MAKE CORRECTIONS AS INDICATED BY THESE INSPECTIONS OR COMPLAINTS RECEIVED. REPORT REQUIRED REPAIRS OR WORK NOT COVERED BY ABSTRACT OF CONTRACT TO OFFICE.
6. CLEAN MACHINE ROOM AND FLOOR WHEN NECESSARY.
7. CHECK CONDITION OF SPILL PANS AND CLEAN IF NECESSARY.
8. USE PERSONAL PROTECTIVE EQUIPMENT AS REQUIRED.

Form 2933C (2-74) Back

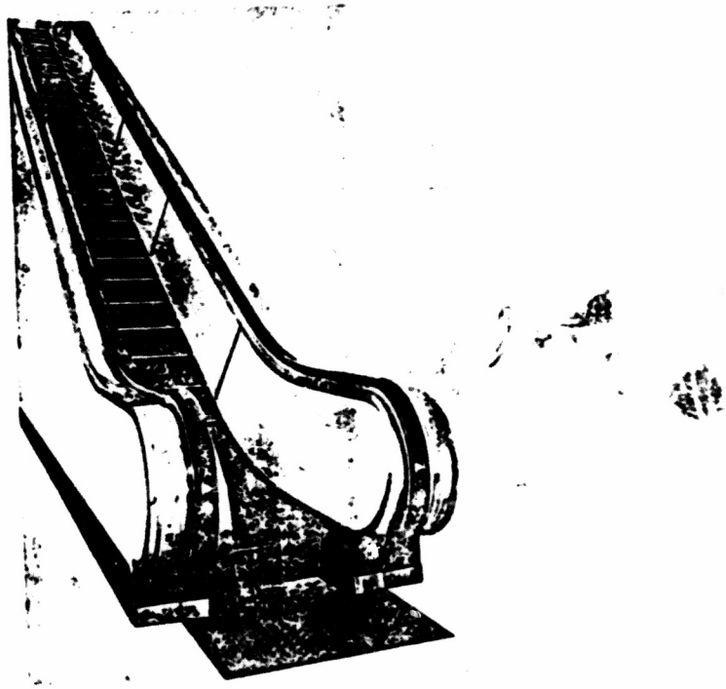
PLAINTIFF'S EXHIBIT 6.

C-969E

TYPE 32R, 32RB, 48R AND 48RB ESCALATORS

MACHINE — MOTOR — CONTROLLER
PUSH BUTTON FIXTURE — COMB LIGHT

(See Parts Leaflet C-970 for other Parts)



PARTS LEAFLET C-969E
SEPTEMBER 15, 1965

OTIS ELEVATOR COMPANY

OFFICES IN ALL OF THE PRINCIPAL CITIES WORLD

PLAINTIFF'S EXHIBIT 6

2

GENERAL INFORMATION

LUBRICATION

Escalators are in continuous operation often under heavy loads, for long periods of time. Like all other apparatus manufactured by the Otis Elevator Company, they are constructed of the best material available. Like any moving machinery, escalators must have proper care, and lubrication systematically applied. A chart (Form 2422S) has been prepared explaining the lubrication of the escalator. This chart, not only designates the various bearings that should be lubricated, but also advises the kind of lubricant to use.

SAFETY FEATURES

Safety features are provided not only to meet legal requirements, but also to safeguard the passengers and to prevent damage to the escalator.

HANDRAIL

The handrails are traction-driven and consist of black rubber and canvas reinforced with steel tape, made endless with a vulcanized joint.

STEP TREADS

Step Treads are subject to severe wear and for this reason are made sectional for economical replacement.

SERVICE

The Otis Elevator Company maintains complete factory-branch service departments in all the principal cities of the world and is prepared to render complete Otis Maintenance Service for your escalators. This service is designed to keep your escalators operating at peak efficiency at all times and is available at a nominal monthly rate.

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PLAINTIFF'S EXHIBIT 6

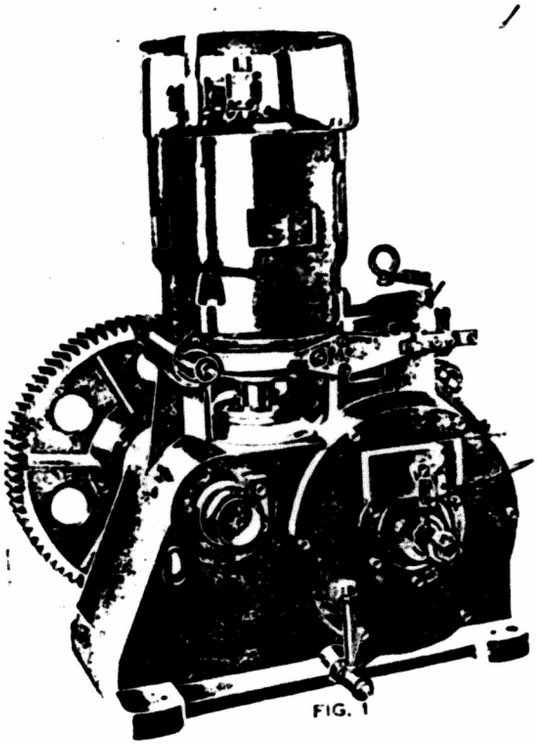
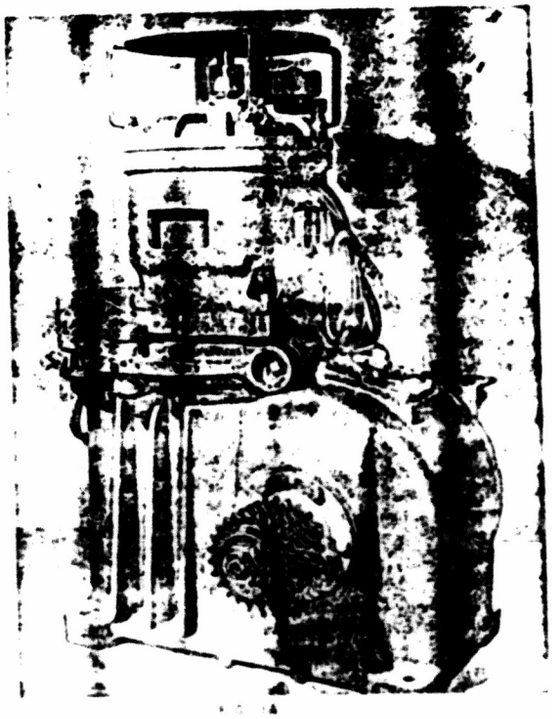


FIG. 1

ASSEMBLY VIEW NO. 16VE MACHINE WITH 60ES MOTOR

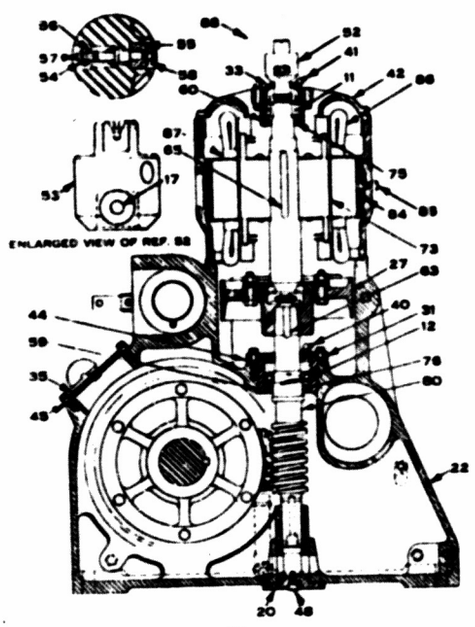
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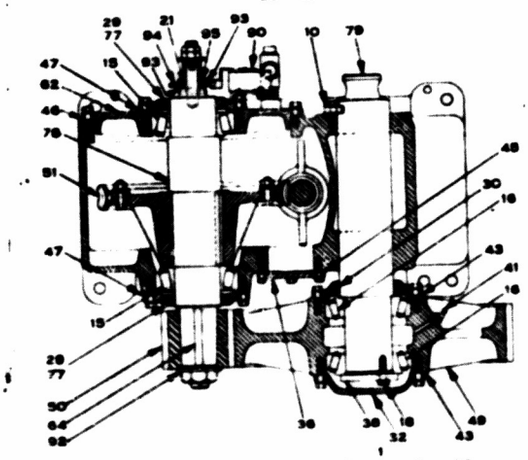


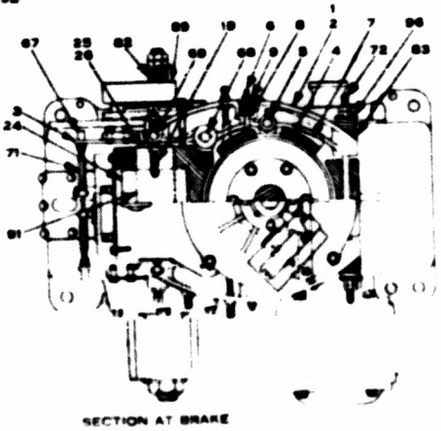
ASSEMBLY VIEW NO. [illegible]VEC MACHINE WITH 60ES MOTOR

PLAINTIFF'S EXHIBIT 6

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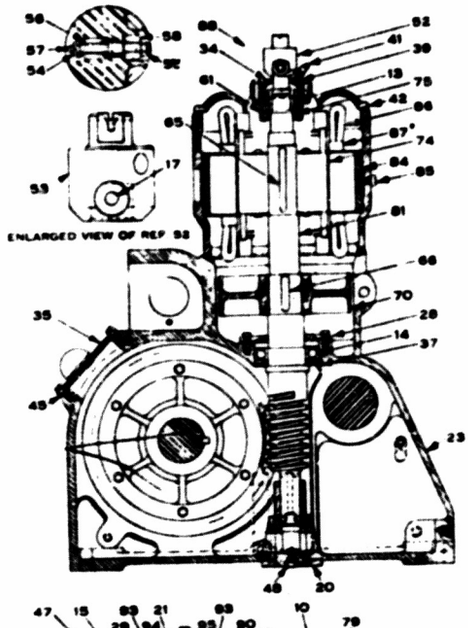


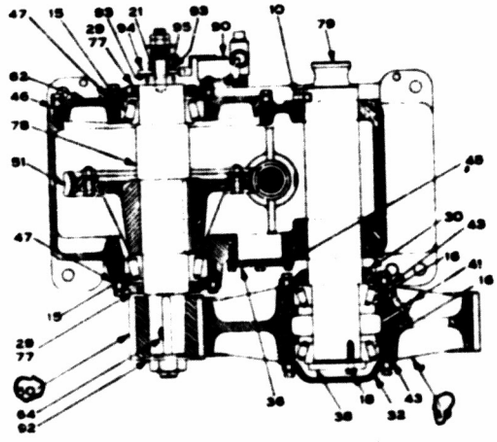


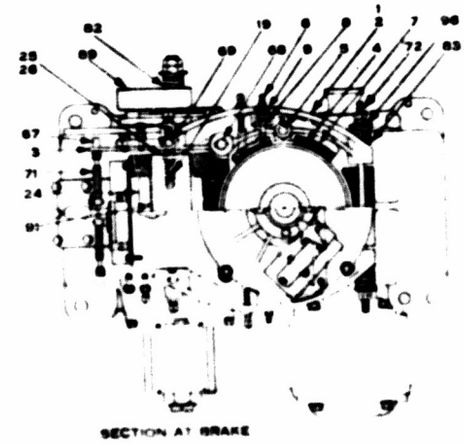
SECTION AT BRAKE

16VE MACHINE FURNISHED UP TO 1951

FIG. 2







SECTION AT BRAKE

16VE MACHINE FURNISHED SINCE 1951
16VEG MACHINE FURNISHED SINCE MAY 15, 1953

FIG.3

PLAINTIFF'S EXHIBIT 6

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TYPE 16VE AND 16VEC MACHINES (GEAR DRIVE), WITH 60ES MOTOR PARTS - FIG. 2 AND 3
ORDER FORM 0-345-

Ref. No.	Part or M.L.No.	Quantity	Description
1	212Z05	2	Arm, Brake with Shoe, each consisting of:
2			1 - Arm, Brake Pt.# A286J1
2			1 - Arm, Brake, with Bushing Pt.# 286J2●
3			1 - Bar, 1" wide, 4-3/8" long, 1/4" thick Pt.# 2x9QK"
-			1 - Bushing, Oilless, 5/8" I.D., 3/4" O.D., 25/64" long (for Arm #286J2) Pt.#335E39
4			2 - Lining, Brake Shoe, 2-3/4" wide, 3" long, 1/4" thick Pt.# A416R1
5			1 - Pin, 5/8" dia., 2-7/8" long Pt.# [illegible]
-			8 - Rivet, 3/16" dia., 5/8" long (for Lining) Pt.# 145C1
6			1 - Rod, 5/16" dia., 3-3/8" lg., Pt.# 96H86
7			- Shoe, Brake, with Lining Pt.# 415D2
8			1 - Spring, 1" O.D., 1-1/2" lg., 4-1/2 active turns,#90XB2
9			1 - Washer, 11/32" I.D., 15/16" O.D., 3/16" thick Pt.# 133E8
10	299LS1	1	Bar, Lock, 1-1/2" wide, 4" lg., 1/2" thick
11	207AA2▲	1	Bearing, Ball (for Rotor Shaft)
12	207Z24▲	1	Bearing, Ball (for Worm Shaft)
13	207AR2	1	Bearing, Ball (for Frame #358AS1)
13	207AR9	1	Bearing, Ball (for Frame #A358AS1)
14	207Z40	1	Bearing, Ball
15	209B19	2	Bearing, Roller (for Driving Shaft)
16	209B20	2	Bearing, Roller (for Idler Shaft)
17	59AX16	1	Bolt, 2-1/4" long (Governor to Shaft)
18	58AD7	3	Bolt, Hex. Hd. Tap, 1/2" dia., 1-1/4" long (for Disk)
19	58BA1	2	Bolt, 3-11/16" long (for Cover)
20	328W1	1	Bushing, Flange, 4-5/8" O.D., 6-9/16" long, bronze
21	335E40	1	Bushing, Oilless, 7/8" I.D., 1-3/8" O.D., 3/16" thick
22	330AV1▲	1	Case, Gear
23	A330AV1●	1	Case, Gear
24	222KA5	1	Coil, Brake, 6300 turns, #23 wire
24	222KA1	1	Coil, Brake, 6950 turns, #24 wire
25	400CA2	1	Core, Magnet, with Bolt & set Screw
26	400CA3	1	Core, Magnet, with Guide, Bolt and set screw
27	210AJ1▲	1	Coupling, Brake, Female Section, 10" dia., 1" face
28	346EZ1●	1	Cover, Bearing (for Bearing 207Z40)
29	346K01	2	Cover, Driving Shaft Bearing
30	346KY1	1	Cover, Inside Idler Shaft Bearing
31	346KY1▲	1	Cover, Worm Shaft Bearing
32	346AZ1	1	Cover, Outside Idler Shaft Bearing
33	346LS1▲	1	Cover, Rotor Shaft Bearing
34	346LS1	1	Cover, Rotor Shaft Bearing, 2-15/16" O.D., [illegible] (for use of a spacer #[illegible])
34	346LS1●	1	Cover, Rotor Shaft Bearing, with four 13/32" holes on 4-5/8" B.C. (not exactly as illustrated) bolted to frame #A358AS1, with four 3/8" x 1-3/4" bolts)

Ref. No.	Part or M.L.No.	Quantity	Description
35	346LT1	1	Cover, Hand Hole, with 1/2" tap
36	346LT2	1	Cover, Hand Hole, w/o pipe tap
37	277AB1●	1	Deflector, Oil (for Bearing #207Z40)
38	353B4	1	Disk, 4-3/8" O.D., 1/2" thick
39	435AH1	1	Fitting, Lubricator (for Cover #A346LS1)
39	435C1	1	Fitting, Lubricator (for Cover #B346LS1)
40	435B1	1	Fitting, Lubricator (for Cover #346KY1)
41	435B4	2	Fitting, Lubricator (for Fitting #435AH1 or Cover #346LS1 Gear #199H1)
42	358AS1	1	Frame, Motor Bearing, 13" O.D.
42	A358AS1	1	Frame, Motor Bearing, 14-1/4" O.D. (not exactly as illustrated)
43	376J8	2	Gasket, 6-5/8" I.D., 8-5/8" O.D., .0025" thick, paper
44	376BJ1▲	2	Gasket, 4-3/8" I.D., 6-1/8" O.D., .006" thick, paper
45	376BK1	2	Gasket, 5" wide, 6-5/8" long, 1/8" thick, vellumoid
46	376JA6	1	Gasket, 15-1/16" I.D., 16-3/4" O.D., .003" thick, plastic
47	376JA8	2	Gasket, 6-7/16" I.D., 8-1/8" O.D., .006" thick, paper
48	376DM1	6	Gasket, Johns-Manville Style 920 Triumph, single jacketed copper metal asbestos, 13/32" x 5/8" x 1/16" (for Bushing #321G1)
49	199H1	1	Gear, Helical Idler, 86 teeth, cast iron (for 10 H.P.)
49	199AD1	1	Gear, Helical Idler, 86 teeth, cast steel (for 15 H.P.)
50	199R1	1	Gear, Helical Pinion, 20 teeth
51	●	1	Gear, Worm
52	6811A1●	1	Governor, Overspeed, set for 1450 R.P.M. tripping speed (for 1200 R.P.M. Motor)
52	6811A3●●	1	Governor, Overspeed, set for 1800 R.P.M. tripping speed (for 1500 R.P.M. Motor)
52	6811A4■	1	Governor, Overspeed, set for 1450 R.P.M. tripping speed (for 1200 R.P.M. Motor)
52	6811A5■	1	Governor, Overspeed, set for 1800 R.P.M. tripping speed (for 1500 R.P.M. Motor) WHEN FOR USE WITH [illegible] Ref. 53 [illegible] Inc)
53	396DT1■	1	Housing (for Governor)
54	67R1	1	Nut, 1/4" Plastic Stop, 13/64" thick
55	67T1	1	Nut, 3/4" Plastic Stop, 5/16" thick
56	9-BB1"	1	Spring, 11/32" I.D., 1-7/16" long, 9 active turns (for Governor #A811A3 or 5)
56	90XA12	1	Spring, 11/32" I.D., 1-9/16" long, 9 active turns (for Governor #6811A1 or 4)
57	29E1	1	Stud, 2-9/16" long, bronze
58	344DA1	1	Weight, 1.6" dia., brass

continued on Page 6

[illegible] -SKF 7207 BYG

PLAINTIFF'S EXHIBIT 6

6

Ref. No.	Part or M.L.No.	Quantity	Description
			Continued from Page 5
-	435K1	1	Gun, Grease (not illustrated)
	188AP2	1	Handle (for Wrench not illustrated)
70	394HX1▲	1	Housing, Worm Shaft Bearing
60	396HY1▲	1	Housing, Rotor Shaft Bearing
61	A396BY1◊	1	Housing, Rotor Shaft Bearing
62	396ER1	1	Housing, Worm Gear Shaft Bearing
63	192D17▲	1	Key, 1/2" square, 2-1/8" long (for Worm Shaft to Coupling)
64	192D24	1	Key, 1/2" square, 4-1/8" long (for Gear #199R1)
65	192G38	1	Key, 3/8" square, 5" long (for Shafts #A490CE2, #A490CM2, #A490CP2 or #A490CZ2)
65	192G46	1	Key, 1/2" square, 5" long (for Shafts #490CE2, #490CL2, #490CM2, #490CP2 or #490CZ2)
66	192G111	1	Key, 5/8" wide, 7/16" thick, 2-3/4" long (for Pulley to Shaft)
67	72AH1	2	Nut, Adjusting (for Rod #95AG1)
-	-	1	Nut, 5/16" Elastic Stop, 29TE-054 (for Bolt #59AX1)
-	78GA13	1	Pin, 1/4" dia., 2-1/8" long (for Pin #81AN1 to Driving Shaft)
17	81AX28§	1	Pin, Spring, 3/8" dia., 2-1/2" long (for Governor to Shaft)
-	81AN1	1	Pin, 7/8" dia., 4-1/2" long (for Driving Shaft)
68	82A45	2	Pin, 3/4" dia., 4-5/8" long (for Arm)
69	82R1	2	Pin, 5/8" dia., 2-1/4" long (for Arm)
70	196G1*	1	Pulley, Brake
71	95AG1	2	Rod, Switch Operating, 5-3/8" lg.
72	96H85	1	Rod, Brake Spring, 1/2" dia., 17" long
73	SEE NOTE▲	1	Rotor, complete, with Shaft
74	SEE NOTE●	1	Rotor, complete, less Shaft
75	33D1	1	Seal, Oil (for Housing #396BY1 or #A396BY1)
75	33D17	1	Seal, Oil (for Frame #A396AS1)
76	33D2▲	1	Seal, Oil (for Housing #396HX1)
77	33D3	2	Seal, Oil (for Cover #346KW1)
-	33D15	1	Seal, Oil (for Cover #346LS1)
78	494DT6	1	Shaft, Driving, with Hub Key & Nut
79	494DY1	1	Shaft, Idler, 21-1/8" long
80	●	1	Shaft, Worm, with Nut
81	●	1	Shaft, Worm & Motor, with Nut
82	90CC1	1	Spring, 1-1/2" O.D., 1-1/2" long, 3-1/2 active turns
83	90KC4	2	Spring, Brake, 1-1/2" O.D., 3-5/8" long, 9 active turns
84	SEE NOTE	1	Stator, complete, consisting of:
85			1 - Bolt, Hex. Hd., 1/2" dia., 7/8" long Part #59W2
86			1 - Coil, Stator, complete set - See Note
87			1 - Insulation, Stator, complete See Note
88	6098D1◆	1	Switch, [illegible]al (Tripper Type)
89	6098AL1◆	1	Switch, [illegible]cal (Brake)
90	6098ZA3◆	1	Switch, Mechanical
91	136R1	1	Tube, Magnet Core, 2-7/8" I.D., 8-5/8" long, bronze
92	127WB1	1	Washer, 1-17/32" I.D., 3-1/4" O.D., 3/16" thick, steel
93	128AL1	2	Washer, 7/8" I.D., 2" O.D., 1/8" thick, oilite
94	131BE1	1	Washer, 1-3/8" I.D., 3-1/2" O.D., 1/4" thick, with notch 1/2" deep, steel
95	131BG1	2	Washer, Keyed, 29/32" I.D., 2-1/8" O.D., 5/32" thick, steel
96	133AF1	2	Washer, Spring Seat (for Rod #96H85)
-	314E9	1	Wrench, Socket (not illustrated)

§ *Bolt no longer available, for replacement order Pin, Spring as above.*

* *No longer available, for replacement order Helical Gears part numbers A199AD1 and A199R1 which must be ordered as a set.*

● *For replacement of Worm Gear or Worm Shaft, furnish description and machine number.*

▲ *No longer available, for replacement, order Cover #A346LS1, Housing #A336BY1, Bearing #207AR2 and Seal #33D1.*

⊕ *Arm with Bushing, no longer available, for replacement, order Arm #A286J1.*

■ *When replacing also add a Pin #81AX28.*

† *For replacement, order Governor #6811A4 and Pin #81AX28.*

†† *For replacement, order Governor #6811A5 and Pin #81AX28.*

▲ *For machines furnished up to 1951.*

◊ *For machines furnished from 1951 to September 1957.*

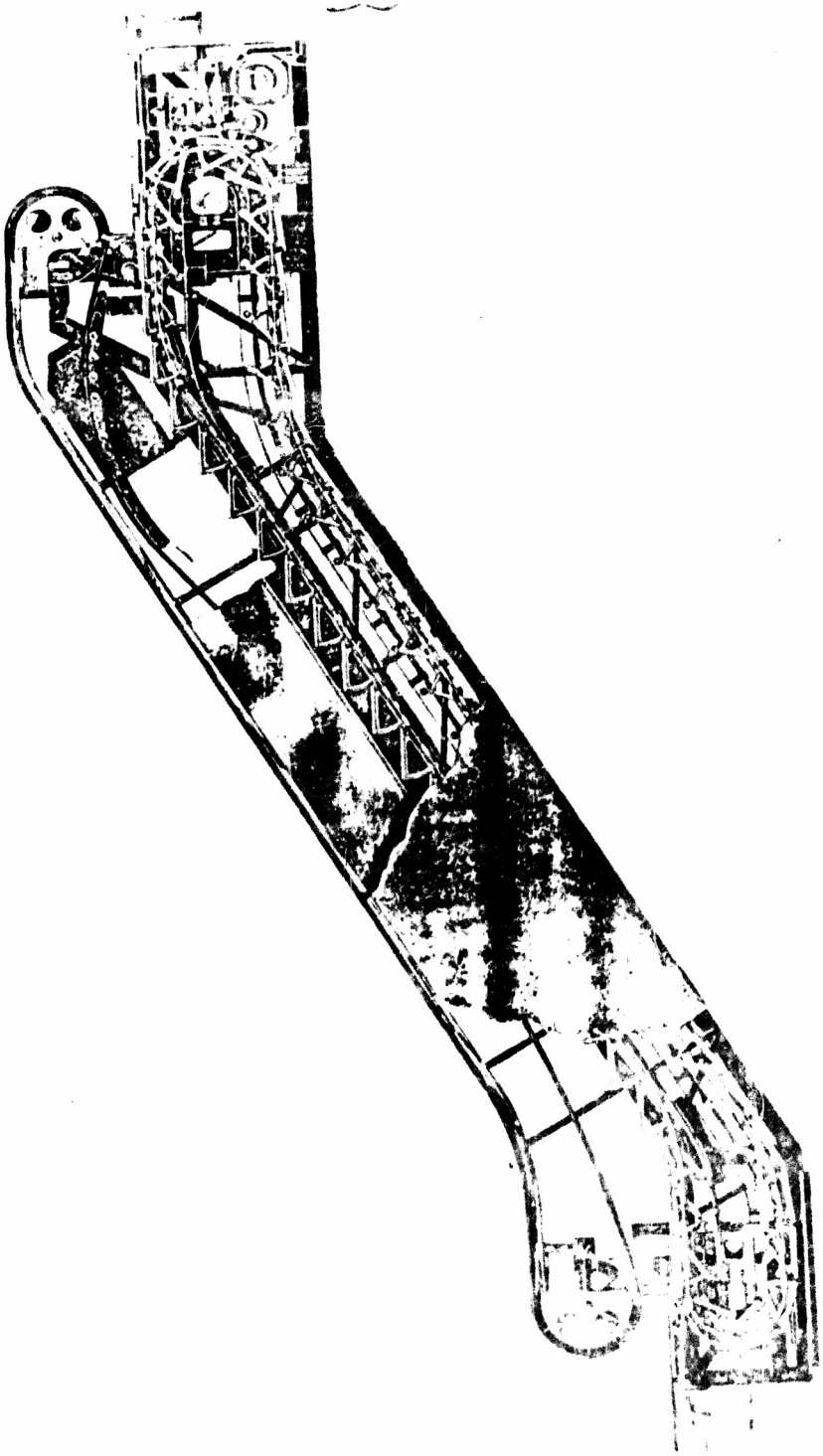
★ *For machines furnished since 1951.*

◆ *For machines furnished since September 1957.*

◆ *For details, see Leaflet C-919.*

NOTE: *When ordering refer to data plate on Motor and give Material List applying to parts needed, also give the Sales and Serial Numbers, all of which are stamped thereon.*

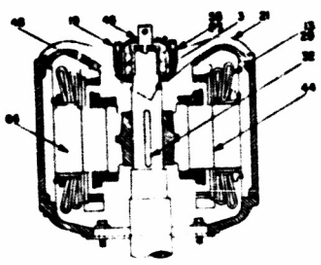
PLAINTIFF'S EXHIBIT 6



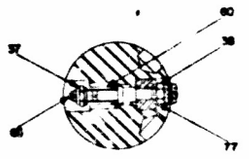
GENERAL ARRANGEMENT

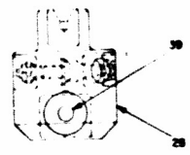
PLAINTIFF'S EXHIBIT 6

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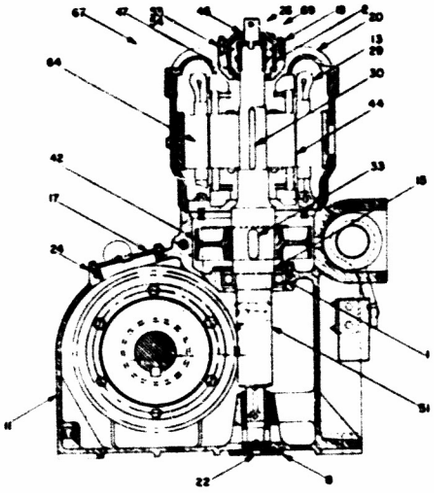


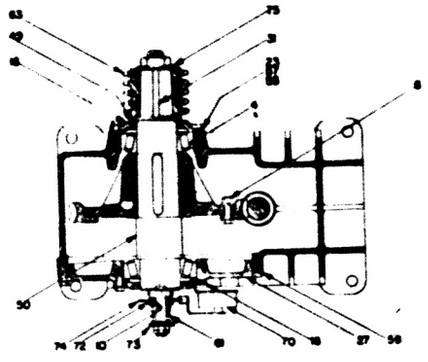
VIEW SHOWING 95ES MOTOR





ENLARGED VIEW OF GOVERNOR





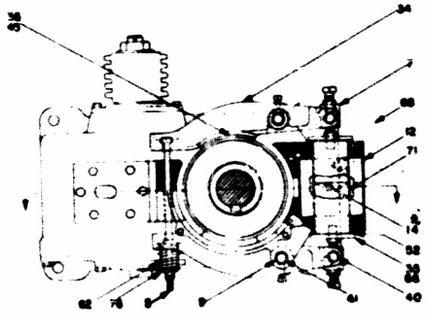


FIG 3A SECTION AT BRAKE

TYPE 17VEC MACHINE WITH 60ES MOTOR

PLAINTIFF'S EXHIBIT 6

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TYPE 17VEC MACHINE, WITH TYPE 60ES OR 95ES MOTOR PARTS - FIG. 3A
(CHAIN DRIVE)
ORDER FORM: O-345F AND SD-345F

Ref. No.	Part No.	Quantity	Description
1	207Z41	1	Bearing, Ball
2	207AR9	1	Bearing, Ball
3	207AR8	1	Bearing, Ball
4	209B19	2	Bearing, Roller
5	60D48	1	Bolt, Sq.Hd., w/Nut, 1/2" dia., 15" lg.
6	84C2	6	Bolt, Oversize Fin. Body, 5/8" dia., 2-1/4" long (Gear Hub to Worm Gear)
7	65GA4	2	Bolt, 4-3/4" long (for Cores)
8	321BF2	1	Bushing, Flange, 4-5/8" O.D., 6-1/16" long, bronze
9	335E80	4	Bushing, Oilless, 1/2" I.D., 5/8" O.D., 1/2" long (for Case)
10	335E40	1	Bushing, Oilless, 7/8" ID, 1-3/8" OD, 3/16" lg. (for Washer #131BE1)
11	A330DD2	1	Case, Gear, with Bushings
-	-	-	Chain, Drive - see "Main Drive" Fig. 12A, Leaflet C-970
12	222EN1	1	Coil, Brake, 5800 turns, #21 wire
13	See Note	1	Coil, Stator, complete set
14	A400DT1	1	Core, Magnet, Female Section with Pin #81BM1
14	A400DY1	1	Core, Magnet, Male Section
15	346YT1	1	Cover, Bearing, 6-15/16" O.D. (for Bearing #207Z41)
16	346KW1	2	Cover, Drive Shaft Bearing
17	346LT3	1	Cover, Hand Hole
18	346LS1	1	Cover, Rotor Shaft Bearing (for Frame #A358AS1)
19	346ABL1	1	Cover, Rotor Shaft Bearing (for Frame #358BE1)
⊛	353BA1	2	Disc, Brake, 4" dia., 1/4" thick, brass (used when Brake Switch is not required)
20	A358AS1	1	Frame, 60ES Motor Bearing
21	358BE1	1	Frame, 95ES Motor Bearing
22	376DM1	6	Gasket, 13/16" I.D., 5/8" O.D., 1/16" thick, single jacketed copper metal asbestos
23	376JA8	2	Gasket, 6-7/16" I.D., 8-1/8" O.D., .006" thick, paper
24	376BK1	1	Gasket, 5" wide, 6-5/8" long, 1/8" thick, vellumoid
25	*	1	Gear, Worm
26⊛	6811A4	1	Governor, Type 6811A Overspeed, complete
-	27AB1	1	Gun, Grease (not illustrated)
-	156AF2	1	Handle, Wrench (not illustrated)
27	396EP1	1	Housing, Sheave Shaft
28	396DT1	1	Housing (for Governor)
29	See Note	1	Insulation, Stator, complete set
30	192G38	1	Key, 3/8" sq., 5" lg. (Rotor to Shaft)
31	192D24	1	Key, 1/2" square, 4-1/8" long (Chain Sprocket to Drive Shaft)
32	192G47	1	Key, 1/2" square, 5-1/4" long (Rotor to Shaft)
33	192G117	1	Key, 7/8" wide, 5/8" thick, 2-3/4" long (Brake Pulley to Shaft)
34	286AP2	2	Lever, Brake, with Lining
35	287BP1	2	Lever, Switch
36	416AJ2	2	Lining, 2-3/4" wide, 5-1/2" long, 1/4" thick (for Brake Lever)
6	67B11	6	Nut, 5/8" Elastic Stop, 39/64" thick (Gear Hub to Worm Gear)
37	67B1	1	Nut, 1/4" Elastic Stop, 13/64" thick (for Governor)
38	67T1	1	Nut, 1/4" Elastic Stop, 5/16" thick (for Governor)
39	81AX28	1	Pin, Spring, 3/8" dia., 2-1/2" long (Governor to Shaft)
14	81BM1	1	Pin, 1/2" dia., 1-3/8" lg. (for Core)
40	82B3	2	Pin, 7/8" dia., 3-1/16" long (Brake Lever to Bolt #65GA4)
41	82BB4	2	Pin, 1" dia., 5-1/8" long (Brake Lever to Case)
42	136AJ1	1	Pulley, Brake, 10" dia., 3" face
43	[illegible]	1	Ring, Stator Adapter
44	See Note	1	Rotor, complete, less Shaft
45	145C1	16	Rivet, 3/16" dia., 5/8" lg., (for Lining)
46	33D15	1	Seal, Oil, 1-1/4" I.D., 2-1/8" O.D., 3/8" thick (for Cover #B346LS1 or 346ABL1)
47	33D17	1	Seal, Oil, 2-1/16" ID, 3-1/16" OD, 3/8" thk. (for Frame #A358AS1)
48	33D16	1	Seal, Oil, 2-3/8" ID, 3-3/16" OD, 7/16" thk. (for Frame #358BE1)
49	33D3	2	Seal, Oil, 3-1/2" ID, 4-1/2" OD, 7/16" thk. (for Cover #346KW1)
50	494HK2	1	Shaft, Driving, with Gear Hub & Pin
51	*	1	Shaft, Worm and Motor, with Nut
52	255CK5	16	Shim, 3-1/8" ID, 4" OD, .008" thk., brass (for Switch Levers)
53	255HB23	3	Shim, 3-31/32" I.D., 5-3/8" O.D., .003" thick, plastic (for Cover B346LS1)
54	255HB22	4	Shim, 3-31/32" I.D., 5-3/8" O.D., .0075" thick, plastic (for Cover B346LS1)
55	255HB20	4	Shim, 4-3/8" I.D., 5-3/4" O.D., .003" thick, plastic (for Cover 346ABL1)
56	255HB21	3	Shim, 4-3/8" I.D., 5-3/4" O.D., .0075" thick, plastic (for Cover 346ABL1)
57	255HB12	2	Shim, 6-13/32" I.D., 8-1/8" O.D., .003" thick, plastic (for Cover 346KW1)
58	255HB11	2	Shim, 6-13/32" I.D., 8-1/8" O.D., .0075" thick, plastic (for Cover 346KW1)
59	255HB32	1	Shim, 16-1/16" I.D., 17-3/4" O.D., .003" thick, plastic (for Housing 396EP1)
60	90XA12	1	Spring, Compression, 11/32" I.D., 1-9/16" long, 9 active turns (for Governor)
61	90CC1	1	Spring, 1-1/2" O.D., 1-1/2" long, 3-1/2 active turns
62	90XC16	1	Spring, Brake, 1-11/16" O.D., 4-1/8" lg., 8-1/4 active turns
63	195FBX	1	Sprocket, Drive, 22 quintuple teeth, 3/4" pitch
63	195FN2	1	Sprocket, Drive, 22 single teeth, 1-1/4" pitch
63	195FP2	1	Sprocket, Drive, 22 double teeth, 1-1/4" pitch
64	See Note	1	Stator, complete
65	99F1	1	Stud, 1/4" dia., 2-9/16" long (for Governor)
66	96A11	2	Stud, 3/8" dia., 1-1/4" long (for Switch Lever)
67	95BC1	4	Stud, 1/2" dia., 3" long
68*	6931A1▲	1	Switch, Brake, complete
69*	6098D1✦	1	Switch, Mechanical
70	6098Z3A3✦	1	Switch, Mechanical
71	136R13	1	Tube, Magnet Core, 3-1/8" I.D., 8-13/16" long
72	128AL1	2	Washer, 5/8" I.D., 2" O.D., 1/8" thick, Oilite
⊛	130AA1	1	Washer, Lock, Keyed, 2-29/64" OD, .050" thk. (for Spring 207AR8)
⊛	130AA11	1	Washer, Lock, Keyed, 2-47/64" OD, .058" thk. (for Spring 207AR9)
73	131BG1	2	Washer, Keyed, 1" I.D., 2-1/8" O.D., 5/64" thk., steel
74	131BF1	1	Washer, 1-3/8" I.D., 3-1/2" O.D., 1/4" thick, with notch, 1/4" deep, steel
75	127WB1	1	Washer, 1-17/32" I.D., 3-1/4" O.D., 3/16" thick, steel
76	133AF1	2	Washer, Spring Seat
77	344DA1	1	Weight, brass (for Governor)
-	316E9	1	Wrench, Socket (not illustrated)

* Arrow indicates location, the parts themselves not showing in the illustration. ⊛ Not illustrated
⊛ See enlarged view. ▲ For details, see Leaflet C 1008. ✦ For details, see Leaflet C-919.
* For replacement of Worm Gear or Worm Shaft, furnish description and machine number.
NOTE: When ordering, refer to data plate on Motor and give Material List applying to parts needed, also give the Sales and Serial Numbers, all of which are stamped thereon.

PLAINTIFF'S EXHIBIT 6

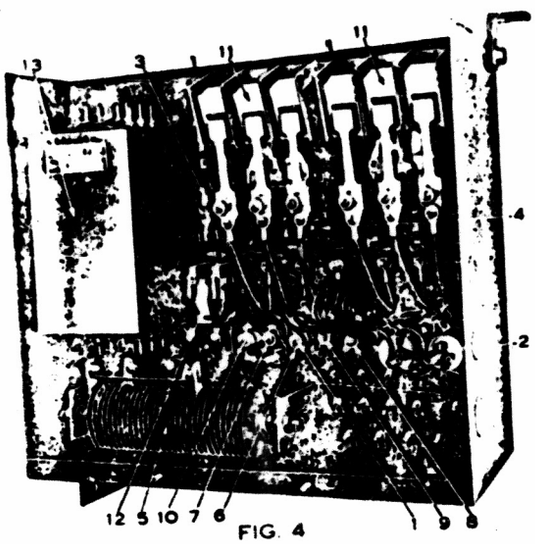


FIG. 4

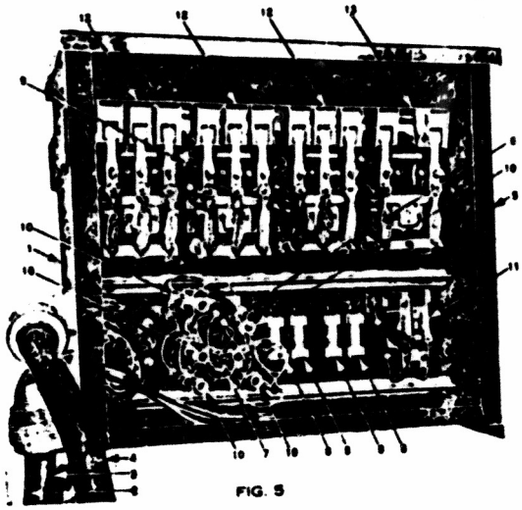


FIG. 5

20NOE CONTROLLER - FIG. 4
ORDER FORM 0-475

Ref. No.	Part or M.L. No.	Quantity	Description
1	175J16	5	Conductor, #33/34, 4-1/2" long, with two terminals
2	226H2	2	Condenser, 250 M.F.
3	375H6	4	Fuse, One-Time, 6 amp., 250 volts
4	A6175A1	1	Interlock (for details, see Leaflet C-921)
5	230AL1	1	Rectifier, R.F.
6	232B10	1	Resistor, 150 Ohms)
7	232B11	1	Resistor, 200 Ohms) For details,
8	232B15	1	Resistor, 500 Ohms) see Leaflet
9	232B16	1	Resistor, 750 Ohms) C-609
10	232B23	1	Resistor, 2500 Ohms)
11	A6163C5	2	Switch, Magnet (for details, see Leaflet C-921)
12	6164AD1	1	Switch, Magnet (for details, see Leaflet C-922)
13	225BV	1	Transformer, Rectifier NOTE: When ordering, give Escalator Sales Number and Controller Serial Number

TYPE 10NE CONTROLLER
(15 H.P. MAX.) & (20 H.P. MAX.♦)
ORDER FORM 0-478- FIG. 5
TYPE 10NOE CONTROLLER (10 H.P. MAX.)
ORDER FORM 0-477

Ref. No.	Part or	Quantity	Description
1•	303H2△	1	Board, 10 stud Terminal
2	-174Z♦	1	Cable
3	-174Z♦	1	Cable
4	-174Z♦	1	Cable
5•	175J86	1	Conductor, #26/28, 8" long (for ground connection)
6	226H1	1	Condenser, 125 M.F.
7	226H2	1	Condenser, 250 M.F.
-	226H4	2	Condenser, 250 M.F. with Resistor #232AE1
8	375H6	4	Fuse, One-Time, 6 amp, 250 volts
8	375H10	4	Fuse, One-Time, 10 amp, 250 volts
9	B6543C1	2	Interlock (for details, see Leaflet C-971)
10	232B♦	-	Resistor (for details, see Leaflet C-609)
11	A6164BP♦	1	Switch, Magnet (for details, see Leaflet C-922)
12	6754A♦	3	Switch, Magnet (for details, see Leaflet C-971)
13	6754B♦	1	Switch, Magnet (for details, see Leaflet C-971)
13	6754C♦	1	Switch, Magnet (for details, see Leaflet C-971)

• *Arrow indicates location, the parts themselves not showing in the illustration.*

♦ *This later type 10NE Controller differs from Fig. 5 illustration mainly in the mounting of the Fuses, Resistors and Condensors.*

♦ *For replacement, furnish description, sales and serial numbers located on the controller name plate.*

△ *Used on Controllers furnished prior to 1955.*

PLAINTIFF'S EXHIBIT 6

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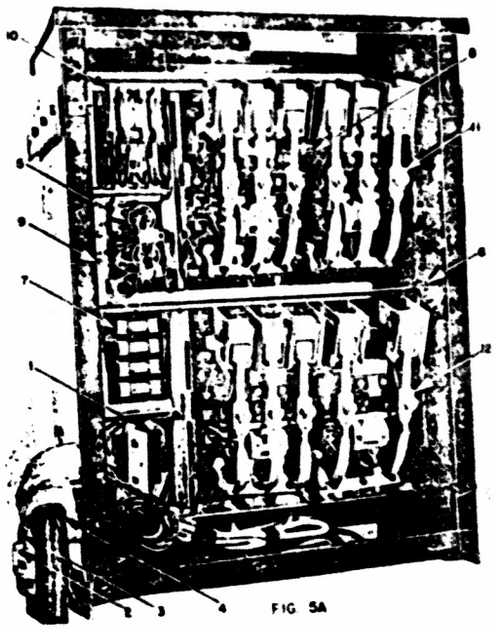


FIG 5A

TYPE 21NE CONTROLLER - FIG. 5A
ORDER FORM 0-479-

Ref. No.	Part or M.L. No.	Quantity	Description
1	303H2	1	Board, 10 stud Terminal
2	A174Z1	1	Cable, 7 conductor, 136" long (for Motor F.L.R.C.-40 amp. max.)
2	A174Z4	1	Cable, 7 conductor, 136" long (for Motor F.L.R.C.-71 amp. max.)
3	A174Z2	1	Cable, 7 conductor, 120" long (for Motor F.L.R.C.-40 amp. max.)
3	A174Z5	1	Cable, 7 conductor, 120" long (for Motor F.L.R.C.-71 amp. max.)
4	A174Z3	1	Cable, 20 conductor, 120" long
5	226H2	1	Condenser, 250 M.F.
-	226H4	1	Condenser, 250 M.F., with Resistor #232AE1)
6*	175J86	1	Conductor, #26/28, 8" long (for ground connection)
-	375M6	*	Fuse, One-Time, 6 amp., 250 volts
8	6543E1	2	Interlock (for details, see Leaflet C-972)
9	232B17	1	Resistor, 250 Ohms)
9	232B16	1	Resistor, 750 Ohms) For details
9	232B18	1	Resistor, 1000 Ohms) see Leaflet
9	232P20	1	Resistor, 1500 Ohms) C 609
9	232H21	1	Resistor, 2000 Ohms)
10	A6164BP-122-CY1	1	Switch, Magnet (for details, see Leaflet C-972)
11	A6830A-241-CY1	3	Switch, Magnet (for details, see Leaflet C-972)
11	A6830A-241-CY1	1	Switch, Magnet (for details, see Leaflet C-972)
12	A6830B-241-CY1	1	Switch, Magnet (for details, see Leaflet C-972)
12	A6830B-241-CY1	1	Switch, Magnet (for details, see Leaflet C-972)

* Arrow indicates location, the part itself not showing in the illustration

PLAINTIFF'S EXHIBIT 6

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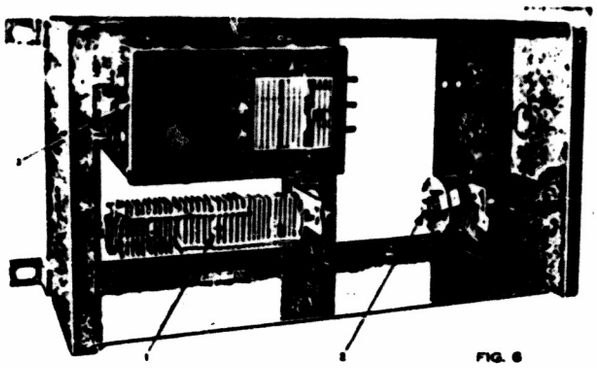


FIG. 6

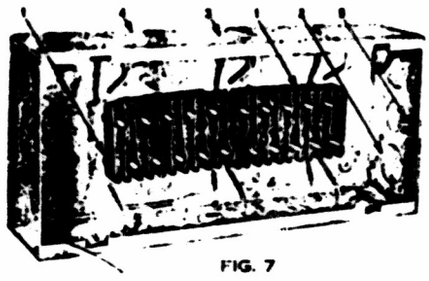


FIG. 7

RECTIFIER & TRANSFORMER BOX - FIG. 6

ORDER FORM 0-4788-

Ref. No.	Part No.	Quantity	Description
1	230AL1	1	Rectifier
2	230AZ1	1	Rectifier (when used)
*	6754A◊	1	Switch, Magnet (for details, see Leaflet C-971 - *NOTE:* For Cold Cathode Balustrade Lighting)
3	235G1	1	Transformer, 185 - 250 volts
3	235G2	1	Transformer, 361 - 484 volts
3	235G2	1	Transformer, 525 - 641 volts
3	225BV1▲	1	Transformer, 190 - 240 volts
3	225BV2▲	1	Transformer, 380 - 440 volts
3	225BV3▲	1	Transformer, 550 - 575 volts

* *Not illustrated.*
◊ *For replacement, furnish description, sales and Serial numbers located on Controller nameplate.*
▲ *Closed type Transformer illustrated.*

6630B JUNCTION BOX - FIG. 7

M.L. 6630B2 and 5 (WITHOUT TOGGLE SWITCH)

M.L. 6630B3 and 6 (WITH TOGGLE SWITCH)

Ref. No.	Part No.	Quantity	Description
1	303B1	2	Board, 10 stud Terminal
1	303H1	2	Board, 18 stud Terminal
2	334G2	1	Bushing, rubber, 1-1/8" I.D., 1-5/8" O.D., 3/8" thick (for 1-3/8" knockout)
3	334G1	1	Bushing, rubber, 1-1/2" I.D., 2" O.D., 3/8" thick (for 1-3/4" knockout)
-	334G3	1	Bushing, rubber, 1-3/4" I.D., 2-1/4" O.D., 3/8" thick (for 2" knockout)
4*	6599A3	1	Switch ✱, Single Pole Toggle
5	129W13	1	Washer, fibre, 19/64" I.D., 5/8" O.D., 1/16" thick

* *Arrow indicates location, the part itself not showing in the illustration.*
✱ *To disconnect Cold Cathode Lighting.*

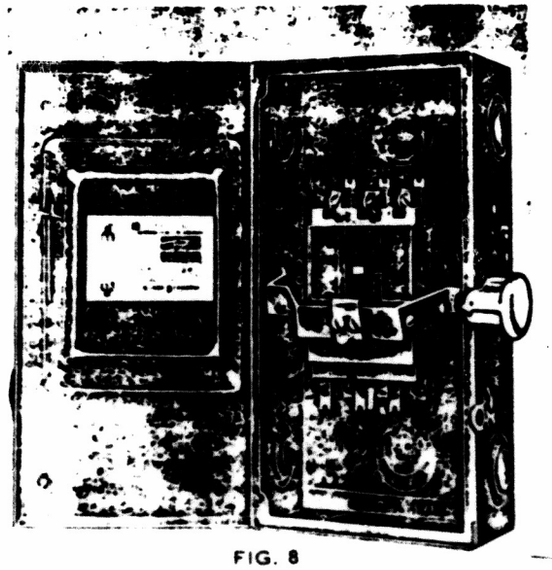


FIG. 8

◊ *CIRCUIT BREAKERS - FIG. 8*

◊ *When ordering give description and [illegible]r Sales Number.*

PLAINTIFF'S EXHIBIT 6

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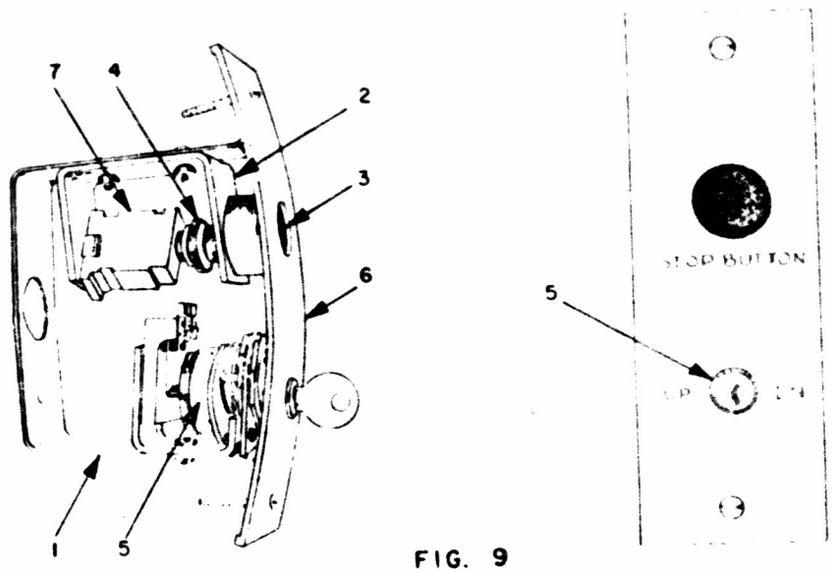


FIG. 9

6533F ESCALATOR BUTTON FIXTURE - FIG. 9

M.L. 6533F1 and A6533F1

Ref. No.	Part or M.L. No.	Quantity	Description
1	316ATH1	1	Bracket
2	316ATJ1	1	Bracket
-	A323AF6	1	Button, Push, black, unmarked, consisting of:
3			1 - Button, Top, black #A323AF1
4			1 - Button, Bottom, black #A323AF3
-			1 - Guide #A385AV1
-			1 - Washer, Shakeproof #130C4
-	323BD7	1	Button, Push, red, unmarked, consisting of:
3			1 - Button, Top, red #323BD6
4			1 - Button, Bottom, black #A323AF3
-			1 - Guide #A385AV1
5	A410E6	1	Contact, Key Operated, Double Throw Making, for details, see Leaflet C-1031
6	147CD1●	1	Plate, Face, 1" dia. hole for Button #A323AF4
6	A147CD1●	1	Plate, Face, 1-5/32" dia. hole for Button #323BD7
-	7035A8▲	1	Unit, Push Button, Single Making/Breaking, complete with Clip, for details, see Leaflet C-1021

● Supply to match face cover. When ordering give part number of Escalator Fixture as listed, state finish if varied

▲ Above Push Button Unit is the replacement for 6534G2 which is no longer available

PLAINTIFF'S EXHIBIT 6

14

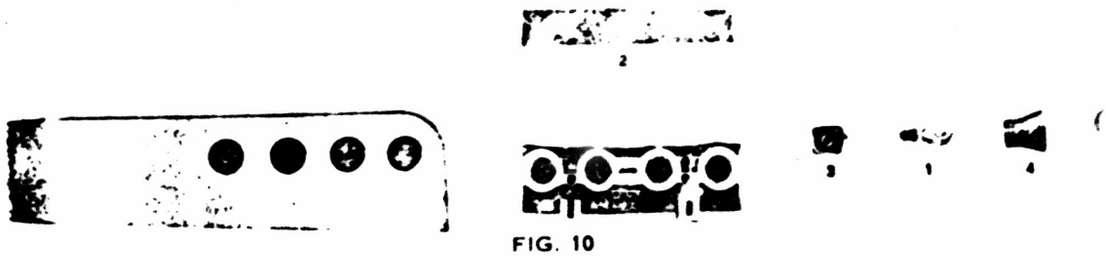


FIG. 10

COMB LIGHT - FIG. 10

M.L. 6814AB1

Ref. No.	Part or M.L. No.	Quantity	Description
1	6599D2	4	Lamp, S-6, 3 Watts, 120 Volts, clear
2	443AR1	1	Lens, 1-5/16" wide, 8" long, 1/8" thick, lucite
3	6644A1	4	Receptacle, Lamp
4	278AD3	4	Shield, Lamp

NOTE: Quantities are for one Comb Light.

(For 3" diam., Comb Light; order from N.Y. Escalator Sales Dept.)

PLAINTIFF'S EXHIBIT 7.

FILE

DEPT. EXHIBIT

SALES ABSTRACT (Escalator)

Date 3/10/66

Contract No. 197887-9

Contract Covers THREE (3) Type 32RB Short Step Reversible Escalators and ... Type ... Short Step Reversible Escalators

This Sheet Covers THREE (3) Type 32RB Escalators and ... Type ... Escalators

Name of Building Penn. Station Redevelopment Address 33rd St./7th & 8th Ave., N. Y. C.

Owner Pennsylvania Railroad Address New York City, N. Y.

Architect Charles Luckman & Assoc. Address 680 Fifth Avenue, N. Y. C.

Contract with Turner Construction Company Address 30 E. 42nd St. N. Y. C.

Submit for Approval to " " " Address " " " " "

Submit Correspondence to " " " Address " " " " "

Building Classification Railroad Terminal Nationally Operating Company No

Walkway will be ready ... Walkway Guaranteed By Purchase Completion Date

Ship to Name—Destination—Otis Elev. Co., c/o Job Site Owner's Order No.

Routing Per Traffic Department Contract Date 3/65

Wanted Date

DOWNTOWN SERVICE OFFICE
MAR 28 1966

Group	Subject & Description		Contract Data						
	POWER SUPPLY		AC ☒ DC ☐ 460 Volts	From: Power Company 3 Phase	3 Wires	60 Cycles	Confirmed ...	Yes ...	
G	CONTRACT NUMBERS		197887	197888	197889				
E	WIDTH OF ESCALATOR		32"	32"	32"				
N	RISE OF ESCALATOR		24'-7-5/8"	24'-7-3/8"	24'-7½"				
E	FLOORS SERVED		Plat.-"B" Lev.	Plat.-"B" Lev.	Plat.-"B" Lev.				
R	SPEED—FEET PER MINUTE		90 XREX	90 XRX	90 XREX	90 120	90 120	90 120	
A	SPECIAL AUTHORIZATION NO.								
II	MACHINE	Size	17VEC	17VEC	17VEC				
		Main Drive	CHAIN	CHAIN	CHAIN				
	MOTOR	Type	60ES	60ES	60ES				
		H.P.	15	15	15				
		R.P.M.	1200	1200	1200				
IV	CONTROLLER	Type	1ONE	1ONE	1ONE				
IV	STEP RISERS		CLEATED	W/ BLACK	EPOXY				
	BALUSTRADES	DESIGN							
		Deck Cover Material	STAINLESS	STEEL					
		Deck Cover Finish	SATIN	"					
		Exposed Moldings Material	STAINLESS	STEEL					
		Exposed Moldings Finish	SATIN	"					
		Interior Panels Material	PLYMETL						
		Interior Panels Finish	STAINLESS	STEEL					
			SATIN	"					
		Skirt Panels Material	PLYMETL						
		Skirt Panels Finish	STAINLESS	STEEL					
			SATIN	"					
	COMB LIGHTS		XREX No	XREX No	Yes No	Yes No	Yes No	Yes No	
	Special Conditions								

CONTRACT No. 197887-9 EST NO. 36516 SUFFIX D TWO SHEETS PAGE 1

PLAINTIFF'S EXHIBIT 7

SALES ABSTRACT (Escalator)

No. 1 97-1 Date 10/6[illegible]

GENERAL CONTRACT DATA

W	Feeder Wiring By OTIS	Light Wiring By OTIS	Shutter Contact Wiring By ----
	Oper. Button Wiring By O.E.CO.	Emer. Button Wiring By O.E.CO.	Directional Sign Wiring By ----
D	Painting STD.		
O	Otis Service... TIRES (3) MONTHS		
N	Inspection Fee & Permit By O.E.CO.		

OWNER TO FURNISH AND INSTALL THE FOLLOWING:

BUILDERS WORK

- Floor openings, framing & finishes.
- Supports or foundations for trusses.
- Exterior covering on sides & soffit of escalator & machine room.
- Manholes & Covers.
- Access ladders.
- Ventilating grilles.
- Access doors.
- Lamp receptacles, extension outlets, etc.
- Floor opening enclosures.
- Rolling fire shutters.
- Directional signs.
- Floor plate fillers.
- Floorings & coverings around escalators.
- Cutting of and making changes to floors, walls, or partitions, together with all repairs made necessary by such cutting and changes, and all painting incidental thereto.
- Current for starting, testing, and adjusting.
- Temporary barricades.

ZONE CONSTRUCTION DEPT. TO PERFORM THE FOLLOWING:

- Obtain confirmation of power supply; Check and confirm size of feeder wires.
- Obtain approval of samples of materials, colors and finishes for balustrades, etc.
- Obtain approval of all contract layouts and details as submitted by Escalator Dept.
- Prepare shipping schedule and submit same to Escalator Dept.
- Order wiring material.

Escalator Dept. will order Balustrades complete, Handrails, Handrail Signs &[illegible]

CONTRACT NO 1/102/1-9 TWO SHEETS PAGE 1

PLAINTIFF'S EXHIBIT 8.

DEFT'S EXH. I.D. 4/13/76

Reference: Zone Service Operations Policy SPO-32, Routine SRO-21

Form 31 10 (11-68)

OTIS NEW OR MODERNIZATION INSTALLATION MAINTENANCE RECORD CARD

CONTRACT WITH THE PENNSYLVANIA RAILROAD

BILLING ADDRESS 242 WEST 31st STREET, NEW YORK, NEW YORK 10001

NUMBER OF ELEVATORS	EXAMINATION FREQUENCY	MACHINE NUMBERS	MACHINE SIZE AND TYPE	CONTROLLER TYPE
1 ESC.	WEEKLY	197889	17VEC 32 RB	1ONE

DURATION OF CONTRACT

MACHINE NUMBER	STARTING DATE	ENDING DATE
197889	9/27/67	12/27/67

SCOPE OF CONTRACT

ITEMS EXCLUDED—Parts chargeable to the Sales or Construction guarantee; parts not installed, altered or repaired under the New Sales or Modernization contract and chargeable to the customer.

SPECIAL CONDITIONS

SUPERVISOR'S SURVEY MADE 11-21-67 (DATE)

NO. OF UNITS TO BE EXAMINED EACH WEEK					ARE FOLLOWING INCLUDED? (YES OR NO)				TO REACH EXAM. TELEPHONE
1ST	2ND	3RD	4TH	5TH	O.T. CALL BACKS YES	O.T. CALL BACKS YES	O.T. EXAMS NO	O.T. REPAIRS NO	1
1	1	1	1	1					

LOC. 33RD ST. 7th & 8th AVE. BLDG. PENNSYLVANIA STATION DEVELOP. SERV. NO. WD-18555-6

Form 218AB (10-68) LABOR POSTING CARD

MONTHLY LABOR ALLOWANCE HOURS

EXAMS. - R.T. 6.8 O.T. C.B. 1.0

OUT. ROUTE EXAM.

TRAVELING TIME REPAIR & ROPE

See Zone Service Operations SPO-23, Sec. 10

ENTER O.T. EXAM. & C.B. PAID HOURS IN RED

REG. TIME EXAM. & C.B. PAID HOURS IN BLACK

USE DOTS FOR R. T. & O.

MONTH	PAYROLL WEEKS 1967 1	2	3	4	5	TOTAL HRS. EXAM.	C.B.	PAYROLL WEEKS 1968 1	2	3	4	5	TOTAL HRS. EXAM.	C.B.
JAN.														
FEB.														
MAR.														
APR.														
MAY														
JUNE														
JULY														
AUG.														
SEP.														
OCT.														
NOV.		2/3	1	1		2 2/3								
DEC.	1													

LOCATION 33rd ST. 7 & 8 AVENUES BLDG. PENNSYLVANIA STATION DEVELOP. SERV. NO. WD-18555-6

PLAINTIFF'S EXHIBIT 9.

(20-2 3-54) Sales No. 197887
Completion Date 9-27-65
Rider Eating Restaurant Corp.
Location 37 E. 8th St. and Ave.
City New York City New York
Type 32RB ESCALATOR Duty 5000 Persons per Hour at 90' F.P.M. ~~120 F.P.M.~~
Current ~~A/C~~ D/C Volts 440 Phase 3 Cycles 60 Wires 3
Current A/C-D/C Volts ____ Phase ____ Cycles ____ Wires ____

SUMMARY OF CONTRACT DATA FOR SERVICE RECORD
TYPE 32RB ESCALATOR

Section Diag. ____
Track Diag. 6814 Arr. #. ____
Lubrication Dwg 848168
Layout No. ____

DEPTEXTEE 4/11/74 5/6

MATERIAL LIST CS PART NO	DESCRIPTION	
Form 0345E1	MACHINE, SIZE 17VEC	C-969
1 2132E 3	Parts Machine, consisting of	
1 396EP1	Housing, Worm Gear Shaft Bearing	
2 33D3	Seal, Oil	
2 209B19	Bearing, Roller (for Driving Shaft)	
1 490FY L2	Shaft, Worm	
1 19[illegible]FP2	Stacker	
1 200BH 5	Gear, Worm	
1 207AR 9	Bearing, Ball (for Rotor Shaft)	
1 33D 17	Seal, Oil (for Rotor Shaft)	
1 33D15	Seal, Oil (for Rotor Shaft Gov. End)	
1 207Z41	Bearing, Ball (for Worm Shaft)	
~~1 209R1~~	~~Gear, Helical (Power) 20 Teeth~~	
1 196J1	Pulley, Brake	
2 90KC4	Spring, Brake, 1½" O.D., 3⅜" Lg.	
1 90CC1	Spring, 1½" O.D., 1½" Lg. for Pin #81AN1	
2 286AP2	Lever, Brake, each consisting of	
1 416AJ2	Lining, Brake, ⅛" x 2⅝" x 5⅛"	
8 145C1	Rivets, Brass, 3/16" x ⅝"	
1 90XC16	Spring, 111/16" O.D., 4⅛" Lg	
1 222EN1	Coil, Brake	
1 6098D1	Switch, mechanical (Brake)	C-919
— 6931A1	Switch, Brake	C-1008
1 6098ZA3	Switch, mechanical (on Pinion Shaft)	C-919
1 494HK2	Shaft, Driving	
1 6811A 4	Governor, for motor speed 1200 R.P.M.	
1 90XA12	Spring, Gov.	
1 6811A ____	Governor, for motor speed 1500 R.P.M.	
1 90B817	Spring, Gov.	
1 6098D1	Switch, mech. (Tripper Type)	C-919

QUAN TITY	MATERIAL LIST CS PART NO	DESCRIPTION	
1	6C ES MOTOR	Volts 440 Phase 3 Cycles 60	C-969
		R.P.M. 1800 H.P. 45	
1	2077AL 37	Stator, complete	
18	223 AL 13	Coils, Stator (set)	
1	2092E 6	Insulation, Stator	
1	A 6351C3	Rotor, complete	
	Form 0478 84		
1		CONTROLLER, Type 10NE	C-969
	Straight Diag.	187480 Field M 2472 A	
1	6843 H-7-A	Panel, Fuse, 1-2-3-4	
29	433BM	Panel, Condenser, Resistor, consisting of:	
1	224H2	Condenser } XLM	
2	226H4	Condenser } D	
1	6843AJ84	Panel, Resistor B, B1	C-609
2	6543C1	Interlock, D-U, L-M	
1	175J86	Conductor, Single	
1	B 174Z3	Cable, (C)	
1	B 174Z 1	Cable, (A)	
1	B 174Z 2	Cable, (B)	
1	230AL1	Rectifier (RF)	
1	~~2356~~ 23563	Transformer (TRF)	
—	2095	Wiring Material	
—	SET	Wiring Material, Dwg 2693	
1	6315T12	Service Thermal overload circuit breaker (SOC) Square D	
	~~Contactor & Resistor Panel 83~~		

QUANTITY	SWITCHES & RELAYS TYPE AND MATERIAL LIST	SYMBOLS	COIL PART NO	LEAFLET NO & C
1	A5164BP 132	XLM	222CY1	923
3	C6754A 2431	D-M-U	222[illegible]	971
1	C6754C 221	L	222[illegible]	971
	B675-A201	CC	222CD1	971

GENERAL DATA

SALES NUMBERS	SERIAL NUMBERS MOTOR	SERIAL NUMBERS CONTROLLER	VERTICAL RISE	FLOORS SERVED
197887	—	—	24'-2"	Mez. - Roof

Use data on this Summary instead of Parts Location, Instructions or Layout Drawings
Issued 3-5-68 by Elevators Works Service Division

(3 Sheets - 1)

PLAINTIFF'S EXHIBIT 9

TYPE 32RB ESCALATOR

Sales No. 197887

QTY	MATERIAL LIST OR PART NO	DESCRIPTION
	Form 1505B	UPPER HANDRAIL MECHANISM C-970
1	D6814A15	Drive, Handrail, as shown, L.H. Side
1	D6814A16	Drive, Handrail, opposite, R.H. Side
(1)	265AW1	Sheave, Newel, Handrail
(2)	207Z19	Bearing, Ball
(2)	195BZ1	Sprocker, Idler, 24 teeth
(4)	207Z18	Bearing, Ball
(1)	195CB1	Sprocker, 68 teeth
(1)	6814BG1	Guide, Handrail, complete
		( ) Quantities are for one side
		TENSION CARRIAGE C-970
1	D6E14 B1	Carriage, Tension & Trippers consist of
2	A396BV1	Housings, Bearing
2	207Z21	Bearings, Ball
2	A195BY1	Sprockets, 16 teeth
8	A456BH2	Rollers, with Bushing, Part 335E19
1	A494EG2	Shaft, with Sprocket Hubs
2	90XC12	Springs, 2" O.D. 6⅛" long 10 Active Turns
2	44CC1	Tripper, complete
1	220B816	Fastenings
		LOWER NEWELS C-970
1	6814W3	Stand, Newel, L.H. Side, Assembly
1	6814W4	Stand, Newel, R.H. Side, Assembly
(1)	265AV1	Sheave, Newel, Handrail
(2)	207Z18	Bearings, Ball
		( ) Quantities are for one side
		MAIN DRIVE SHAFT C-970
1	2171DB6	Parts, Main Drive Shaft
1	494[illegible]2	Shaft, Main Drive
1	195EW1	Sprocker, Step Chain, 20 teeth
1	195DF2	Sprocker, Step Chain, 20 teeth
		For Gear Part 199J1
2	195BV1	Sprocker, Handrail Drive, 75 teeth
2	396DE1	Housings, Bearing
2	33B13	Seals, Oil
2	209W1	Bearings, Ball
2	332AW1	Chain, A.S.A. #60 Bald-Duck ⅜" P ⅛" W.
		Total length #227P (170⅛")
1	332AW [illegible]	Chain, Main Drive
1	220588 B7	Fastenings
1	195[illegible]PB1	Sprocker, [illegible]
1	494 [illegible]	Shaft, Brake
1	609820 B	Switch
1	2736P8 [illegible]	Bracket, Brake Parts

Newels - Drive & Broken Chain Safety Device

QTY	MATERIAL LIST OR PART NO	DESCRIPTION
		BROKEN CHAIN SAFETY DEVICE C
1	220481	Device, Broken Chain Safety, consist of
1	28EFA1	Lever, as shown
1	28EFA2	Lever, opposite
2	28EFN1	Levers
4	446D1	Trippers
1	6098D1	Switch, Mech. L.H. Side C
1	6098D3	Switch, Mech. R.H. Side C

MATERIAL FURNISHED BY ZONE RUBBER HANDRAIL, DWG 50VZ OR 50ACT, 6814CH

(3 Sheets #1)

PLAINTIFF'S EXHIBIT 9

STEP RISERS { ☐ PORCELAIN ☒ CLEATED ☐ STAINLESS STEEL

TYPE 328B ESCALATOR Sales No. 197689

2020VR(13 6-)

Steps—Step Chains—Handrail Guides—Tr... s—Lubricators—Comb. Floor Plates—Button Fixture

QTY	MATERIAL LIST OR PART NO	DESCRIPTION
	01506	**STEPS** C-970
	6291	Step Ass'y (Removable Type) consist of
	455R1	Tread
	455BA3	Tread
	455BA4	Tread
	455AD2	Tread
	454R2	Riser, Cleated
	454R3	Riser, Cleated
	454T2	Riser, Cleated
2	290AJ2	Wheels
8	B-124FA1	Screws (for Fastening Treads)
92	# 6291 L3	Step Ass'y (Non Removable Type) consst. of
—	455R2	Tread
1	455BA1-26 [illegible]	Tread
—	455BA2	Tread
1	455AD1-26 [illegible]	Tread
1	454R2-[illegible]	Riser, Cleated
—	454R3	Riser, Cleated
1	454T2-[illegible]	Riser, Cleated
2	290AJ2	Wheels
		STEP CHAIN C-970
45	6283E2	Step Chain Unit (ea. 8' lg.) ea consst of
36	290AJ2	Wheels
1	6283E1	Step Chain Unit (ea. 32" lg.) ea consist of
12	290AJ2	Wheels
—	6283F1	Step Chain Offset Unit (ea. 16" lg.)
4	290AJ2	each consst. of Wheels
		COMB & FLOOR PLATES C-970
1	6814Y 4	Lower Landing consist of
—	453Y1	Comb Section (Alum.)
—	453Y4	Comb Section (Alum.)
3	453Z1	Comb Section (Phenolic)
1	453Z4	Comb Section (Phenolic)
1	457AH1	Plate
1	457AJ2	Plate
8	124AG1	Screws
1	# 6814Z 4	Upper Landing consst. of
—	453Y1	Comb Section (Alum.)
—	453Y4	Comb Section (Alum.)
3	453Z1	Comb Section (Phenolic)
1	453Z4	Comb Section (Phenolic)
1	457AH1	Plate
1	457AJ2	Plate
8	124AG1	Screws

QTY	MATERIAL LIST OR PART NO	DESCRIPTION
		Curved Track (Upper Line) C
1	6814EB1	Track, Ass'y Upper Landing (L.H.)
1	6814EB2	Track, Ass'y Upper Landing (R.H.)
1	6814EA1	Track, Ass'y Lower Landing (L.H.)
1	6814EA2	Track, Ass'y Lower Landing (R.H.)
1	2203A4	Constant Track (Return Line) consst of
1	6814DY1	Track, Chain Wheel (L.H.) Upper Landing
1	6814DY2	Track, Chain Wheel (R.H.) Upper Landing
1	6814DP1	Track, Trailer Wheel (L.H.) Upper Landing
1	6814DP2	Track, Trailer Wheel (R.H.) Upper Landing
1	6814DT1	Track, Chain Wheel (L.H.) Lower Landing
1	6814DT2	Track, Chain Wheel (R.H.) Lower Landing
1	6814DR1	Track, Trailer Wheel (L.H.) Lower Landing
1	6814DR2	Track, Trailer Wheel (R.H.) Lower Landing
4	6337P1	Hand Rail Guards
2	6814BR1	Micro Switch (For Skirt Guard)
2	6814BS3	Micro Switch (For Curved Upper
1	7049A1	Cut-Out Switch Ass'y
1	2206D1	Spring Balancing Parts (For Hinged Floor Plate
1	A6245R1	Chain Lubricator (Step Chain)
1	6814AK1	Hand Rail Trailer Guides consist of
28	756AT2	Rollers
2	385EW1	Guides
		OPERATING BUTTON C-9
2	A-6533P1	Fixture (each consst. of)
1	6410E6	Key Operated Contact Ass'y
1	7035A1	Push Button Unit
1	A431C3	Lock
1	323B07	Button
		HANDRAIL GUIDES
2	385J	Upper Curve
2	385J	Lower Curve
	385J	Intermediate Sections

☐ Sheet #3

PLAINTIFF'S EXHIBIT 10.

DEFT EXH D FOR I.D. 4/13/76 EP

ADDRESS 7th to 8th AVENUE 33rd ST. BUILDING OR TENANT PENN STATION REDEVELOPMENT DIST NO 6

ORDER NO.	DATE	Customer No.	NATURE OF WORK	MACHINE NO	PRICE
35264	10-1273		Inspect & Repair Controller & Esc.	197859	332 42
3632	1-14-74	931-2-58	-V91145-4 Contact, Switch		60 23
3632	1-14-74	938-2-090	-U035933-4 Handrail	114997	495 5
3640	1-8-74		Reattach sheave Cut + Uncover 2 Right Handrail	112069	821.30
36337	1-18-74	931-2-010	V038755-4 Sprockets, Bearings	197859	163 29
36327	1-18-74	935-2-010	V03901-4 Handrail	114997	219 3
36364	1-20-74		Enclose 0 New Handrail		700 5
36304	1-22-74	935-2-090	-U02958-4 Plates		746.46
36355	1-25-74	938-2-090	-U02924-4 Buttons, Faceplate	197857	41.06
36371	1-26-74		Enclose 2 New Handrails	W499611	1813.00
36351	1-5-74	938-2-090	-U029558-4 Black Handrail	111496	468 07
36311	1-30-74	931-2-090	-U025234-4 Lube Oil		100.80
36313	1-30-74	931-2-090	-U851764 Contacts,		28.56
36312	1-25-74	931-2-090	-U-25130 Switches Stock #931N0		20 77
36318	1-9-74	931-2-090	-V86861-4 Sprockets, Bearings		230.14
[redacted]					
38064	5-9-74	1600239	6 #VP-42C540 Cleaning Compound #2		31.07
38051	5-9-74	A00446	Coils Stock #938C110 + DSK #947055A		149.53
[redacted]		[redacted]	938C011		
38040	6-11-74	1606523	2 #700981 Switches Stock # 947A1218		51.09
38073	9-15-74	1603270	Oil #39 Stock # 931027T2		61.92
38151	10-7-74	1606047	82FT. Stock #938A071- Handrail BK OTIS TYPE MC Stock # 111498		$21.21
36091	11-6-74		Fur. Hex. hubs - To Install & Splice Handrail	111411-B	$15.00

INDEX OF ORDERS

ADDRESS 7th Ave & 31st Street BUILDING OR TENANT Penn Rail Road DIST NO

ORDER NO.	DATE	Customer No.	NATURE OF WORK	MACHINE NO	PRICE
39304	6-21-67	Arigno	Repl 60 Hdrl #33 Oil		186.12
39265	6-19-67	Arlene	#130 Transformer #225A99		46.53
29306	6-25-67	Arlene	#59 Sprockets #94225, #94221, #94213		808.70
39223	6-14-67	Arlene	#791 Re Completion #45321		415.50
39215	6-14-67	Arlene	#794 2 Sprockets #195821		64.96
39220	6-14-67	Arlene	#236 6 Swi #177A81 ; 6 Actuators #230A81		70.56
39220	6-21-67	Arlene	#942 1 Step #1291E2 ; 1 Step #1298E4 ; 10 Hdrl Rail #898A82		416.37
39220	6-21-67	Arlene	#939 Middle Swi #700981, #700982 ; 6 Actuators #700A81		102.32
39335	7-26-67	Arlene	#939 Middle Swi #700981, #700982 ; 6 Actuators #700A81		10.30
39409	9-12-67	Arlene	#638 5 Spot Packing #18726		94.10
39431	9-12-67	Arlene	#731 24 Gals #39 Oil		29.88
39234	9-26-67	Arlene	#451 Sprocket #131B81 ; Bushing #335E40	M2858-9	967.30
39029	9-14-67	Arlene	#849 Threads #458A1 ; #455AD ; #458CA1		14.18
39351	9-26-67	Arlene	#496 4 Pins #7744, 4 Rollers #426C4		190.28
39465	10-7-67	Arlene	#035 4 Keyslot #6410E6		214.36
39447	10-7-67	Arlene	#190 Sprockets #195821, CA1 BV1		627.75
39457	10-17-67	Arlene	#35 Comb Plates #45321, #7		
39492	11-14-67	Arlene	#776 Step #A6291614, Wheels #290A84, Step Tool #9		347.16
39493	11-14-67	Arlene	#76 Step #A6291613, Screws #124FA1 #CA1		
21049	11-1-68		Final Acceptance From Construction 10-22-68	197861-2	
21049	11-6-68		10-30-68	197861	
21082	11-18-68		Make Necessary Repairs To Existing Condition At The Upper Landing	111908	40.00
39917	4-24-68	Arlene	#292 4 #9 Escalator Step Pin		19.16
39456	10-16-68	Arlene	#164 90 FT. Handrail & #15 Fabric		391.30

INDEX OF ORDERS

PLAINTIFF'S EXHIBIT 10

ADDRESS [illegible] BUILDING OR TENANT [illegible]

ORDER NO.	DATE	CUSTOMER NO.	NATURE OF WORK	MACHINE NO.	PRICE
21011	12-1-68		Instl. New Handrail On North Side #4 Escalator	#4 Rise 9'-8"	35.00
39606	12-30-68	Lehigh #014	Contacts #703CAR, A10 - Buzz. #6219		47.98
39651	12-30-68	Gibbons #498	Gen. Lifter #9; Flow Nozzle #53		55.00
39652	12-30-68	Gibbons #498	Transformer #825KAB		48.08
21362	2-5-69		Correct Wire In Car Operating Panel - Adjust "DZ"	197899	
			Limit Sw. Replaced Open Wire In "36A" Limit		
39624	2-13-69	Gibbons #499	1 Rectifier #230AR1		17.90
21445	2-13-69		S/O Nos AE 1/2 Contact - Add Gate Contact		65.29
21310	1-22-69		Elev S/O - C.O.P. Burnt - Traveling Cables Damaged - Instld.	197899	
			New Traveling Cable - Install Sheet Metal Detector Plate.		77.00
21362	2-24-69		Labor To Locate & Correct Short In Operating Circuit -	197899	
			Make Necessary Adjustments To Door Circuit Switches		215.00
39631	3-7-69	N-38-1030-1917	Contacts To Accord #150N4, #160P4, #93AY	197880	19.32
39766	3-20-69	N-38-1030-2073	Arms #287W1, W2	197899	
39767	3-20-69	N-38-1030-1898	6 Shields #95CA1		
39775	3-20-69	N-38-1030-2089	40 Gals #39 oil		
39643	3-31-69	N-38-1030-2093	Lens #289990CB; Hood #2376A2; Tube #2776A2, 24" #2776A2		102.92
39796	4-3-69	N-38-1030-2092	Cont. Plates #145 21, 22, 23, 25, 26, 28, 29	197880-2-197899	273.25
21207	12-11-68		Tamper all Sizes, Follows		
39851	4-25-69	N-38-1030-2192	Contact A80468; Bar 1930AE1; Switch #609BE1	197899	
39855	6-1-69	N-38-1030-2277	Screw #307AC3, AC4	197899	44.24
39879	5-15-69	N-38-1030-2254	1 Oil Pressure Pilot Relay #171959		70.32
39912	6-6-69	N-38-1030-2348	3-Cables #1748E1		29.76
ND 39913	6-5-69	N-38-1030-2346	1 Interlock #6940AG1		19.52
39229			Parts		

INDEX OF ORDERS

ADDRESS 7th to 8th AVE. 33rd ST. BUILDING OR TENANT PENN STATION REDEVELOPMENT CORP. CUST. NO. 6

ORDER NO.	DATE	CUSTOMER NO.	NATURE OF WORK	MACHINE NO.	PRICE
35246	7-13-73		Instl 1 Continuous Length Handrail on ESC	197899	667.64
36087	8-24-73	936-2-010	Complete Steps, Wheels	197863	606.99
36102	8-26-73	936-2-010	Wheels, Springs, Rings		178.37
36103	8-25-73	936-2-010	Shoes, Springs, Shoe		72.28
21135	8-9-73	936-2-010	Sprocket, Bearings		166.32
36089	8-21-73	936-2-010	Main Drive Trough, Conductor		62.64
36123	8-21-73	936-2-010	Hand Rail		693.28
36124	8-22-73	936-2-010	Newel Base		895.50
36037	8-22-73	936-2-010	Handrail		3164.12
36114	8-22-73	936-2-010	Steps		96.58
36148	8-22-73	936-2-010	Sprockets	113078	459.63
36128	8-22-73	936-2-010	Handrail		149.31
36184	8-25-73	936-2-010	Contacts, Springs, Washers, Track		80.33
36088	8-6-73		Chains	111606	1077.17
36192	8-28-73	936-2-010	Handrail Guide		192.58
36193	8-28-73	936-2-010	Insulation Oil		118.96
36233	8-30-73	936-2-010	V0335B5-3 Contacts		101.95
36234	8-30-73	936-2-010	V0335B5-3		169.10
36233	8-30-73	936-2-010	2090-1M3522-3 BASE, DEFlector	197899	719.55
36245	8-29-73	936-2-010	V03619-3 Black HANDRAIL	113069	995.5
36255	8-31-73	936-2-010	V03711-3 Handrail	111499	995.5
36254	8-31-73	936-2-010	V-3142-3 Black HANDRAIL		241.1
36233	8-31-73	936-2-010	34823 CONDENSER, Resistor, Rectifier, Fuse		2.28
36244	8-31-73	936-2-010	V03626-3 Main Sprocket, Bearing, etc.	112070	633
24615	1-3-74		Install New Neutral & HAND Side.		

INDEX OF ORDERS

DEFENDANTS' EXHIBIT C.

CALL SHEET DATE 1/13/75

TIME	CALL BY	Rec'd BY	NATURE OF TROUBLE & CORRECTION	TIME ARR.	TIME OK	TECH INIT.
F.F.	FF	F	JDF report in 11 3/4 hrs.	4/14/75		
2 47/60 PM	Port Authority	FF	Light out Men's Rm P.C. 2 relamped area	2 30/60 PM	3 40/60 PM	TOC-FG
4 33/60 PM	Sarg	FF	B13 - NO Lights OK	4:00 PM		BC-FG
			Teasley	3 59		
			Post Assembly	BJ		
24-	Peg	Vic	Coach Lunch Inst B2 Elev in area 4	4	5 30	24
			Returned service shut down 5 30			
8 20	Vic	Vic	Will be out to C.L. Jackson Reset Breaker	8 Ca	8 35	

Judgment Appealed From.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Marvin E. Frankel, United States District Judge, and a jury, on July 26, 27 and 28, 1976, and the jury having returned a verdict in favor of the plaintiff, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff Elizabeth C. Monroe have judgment against defendants Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees of the property of Penn Central Transportation Company, Debtor, in the amount of $25,000.

Dated: New York, N. Y.
July 30, 1976

RAYMOND F. BURGHARDT
Clerk

Services of three (3) copies of
the within appendix is
hereby admitted this 17 day
of November, 1976.

Tuckerberg & Tuckerberg

Attorney for

by Lewis C. Tuckerberg